

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 789

**THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY, PETITIONER,**

vs.

**GORDON BROWNING ET AL., CONSTITUTING THE
STATE BOARD OF EQUALIZATION OF TENNESSEE**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF TENNESSEE**

PETITION FOR CERTIORARI FILED MARCH 5, 1940.

CERTIORARI GRANTED APRIL 22, 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY, PETITIONER,

vs.

GORDON BROWNING, GROVER KEATON AND A. B.
BROADBENT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF TENNESSEE

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[fol. 1]

[Caption omitted]

[fols. 2-3] **IN CIRCUIT COURT OF DAVIDSON COUNTY**

[File endorsement omitted]

The Petition of THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY, a corporation duly chartered, organized and
doing business under the laws of the State of Tennessee,
against

GORDON BROWNING, GROVER KEATON, A. B. BROADBENT, WAL-
LACE EDWARDS, and Walter Stokes, Jr., members of and
constituting the Board of Equilization of the State of
Tennessee.

PETITION—Filed Dec. 9, 1938

To the Honorable A. B. Neil, Judge of the Second Circuit
Court of Davidson County, Tennessee.

Petitioner respectfully shows unto your Honor as fol-
lows:

I

That it is a corporation chartered by the laws of the
[fol. 4] State of Tennessee, and a resident of said State,
having its principal office in Nashville, Davidson County,
Tennessee.

That under the authority of the laws of the State of
Tennessee, and of the other states hereinafter mentioned,
on January 10, 1938, petitioner operated and controlled, and
now operates and controls a line of railway reaching from
Nashville, Tennessee, to Chattanooga, Tennessee, known
as its main line or Chattanooga Division; another line of
railway reaching from Chattanooga, Tennessee, to Atlanta,
Georgia, known as the Western & Atlantic Railroad or At-
lanta Division; another line of railway reaching from Nash-
ville, Tennessee, to Hickman, Kentucky, known as the
Northwestern or Nashville Division; another line of rail-
way reaching from Wartrace, Tennessee, to Shelbyville,
Tennessee, known as the Shelbyville Branch; another line
of railway reaching from Tullahoma, Tennessee, to Sparta,
Tennessee, known as its McMinnville Branch; another line
of railway reaching from Decherd, Tennessee, to Columbia,

Tennessee, known as its Fayetteville and Columbia Branch; another line of railway reaching from Elora, Tennessee, to Gadsden, Alabama, known as its Huntsville and Gadsden Division; another line of railway reaching from Cowan, Tennessee, to Palmer, Tennessee, known as the Tracy City Branch; another line of railway reaching from Bridgeport, Alabama, to Pikeville, Tennessee, known as the Sequatchie Valley Branch; another line of railway reaching from [fol. 5] Dickson, Tennessee, to Allen's Creek, Tennessee, known as its Centreville Branch; another line of railway extending from Paducah, Kentucky, through Paris, Tennessee, Lexington, Tennessee, Jackson, Tennessee, to Memphis, Tennessee, known as the Paducah and Memphis Division; another line of railway reaching from Rome, Georgia, to Kingston, Georgia, known as the Rome Branch; another line of railway reaching from Bridgeport, Alabama, to Orme, Tennessee, known as the Orme Branch.

The line of railway from Chattanooga, Tennessee, to Atlanta, Georgia, known as the Western & Atlantic Railroad, is leased by petitioner from the State of Georgia for a period of fifty years from December 27, 1919, and is now being operated by it under said lease as an integral part of its system.

The line of railway above mentioned from Paducah, Kentucky, to Memphis, Tennessee, is leased by petitioner from the Louisville and Nashville Railroad Company and is being operated by it under said lease, which lease runs until September 10, 1995.

Portions of all these roads, save the Rome Branch, extending, as aforesaid, from Rome, Georgia, to Kingston, Georgia, are assessable for ad valorem taxation in the State of Tennessee.

[fol. 6]

Ex. 1

A correct statement of the separate charters under which the above mentioned roads, divisions and branches were incorporated and constructed is hereto attached and made a part hereof, marked Exhibit No. 1, but not for copy.

In addition to the foregoing, petitioner operated on January 10, 1938, and now operates, as an industrial or service track 3.65 miles of track within the terminal limits of Nashville, Tennessee, formerly known and operated as the West Nashville Branch, constructed under a charter issued

by the State of Tennessee to West Nashville Railway Company March 17, 1887; purchased by Nashville Land Improvement Company, June 1, 1887, and by petitioner on July 6, 1887. Since the discontinuance of the West Nashville agency station in 1932, this track has possessed no attribute of a main track.

All of petitioner's lines are highways of interstate commerce and more than half its gross revenues are derived from interstate commerce.

II

The defendants, Gordon Browning, Governor of Tennessee, Grover Keaton, Treasurer of Tennessee, A. B. Broadbent, Secretary of State of Tennessee, Wallace Edwards, Commissioner of Administration, and Walter Stokes, Jr., Commissioner of Finance and Taxation, are and constitute the Board of Equalization of Tennessee, under and by virtue of the Public Acts of the General Assembly for 1937, Chapter 33, section 52; and the said defendants are sued and made defendants to this petition as members of and constituting the said State Board of Equalization.

III

The several lines of railroad so operated and controlled by petitioner are subject to assessment as the basis for ad valorem taxation in Tennessee by the Railroad and Public Utilities Commission and by the State Board of Equalization, in so far as and to the extent that they are subject to state, county or municipal taxation in Tennessee, pursuant to the provisions and direction of sections 1508-1540 of the Code of Tennessee, effective January 1, 1932. Such assessments are made biennially, in the even years, and when the valuation of the property to be taxed is fixed by the Board of Equalization, the Board is required by section 1535 of [fol. 8] the Code to certify the amount thereof to the Railroad and Public Utilities Commission.

To the valuation so certified the Railroad and Public Utilities Commission is required by section 1536 to apply the state tax rate and file with the Comptroller of the State the amount of the tax to be collected; and to certify to the county court clerk of each county, and to the mayor of each incorporated city or town, the amount or value of property to be taxed in each such county, city or town.

The several code sections referred to authorize and direct the Railroad and Public Utilities Commission, as a basis for the assessment, to require railroad companies, including petitioner, to prepare and file certain enumerated schedules and statements under oath, and authorized the Commission to "take such additional evidence as to the value of any property to be assessed by them as may be deemed proper." The power and authority to take such additional evidence is however expressly conditioned and limited by the statute (Code, Section 1523) by the following proviso:

"* * * but such additional evidence shall be reduced to [fol. 9] writing and opportunity afforded, if desired, to the owner to submit additional evidence or counter-evidence to that required by said commission, and the records of the said commission shall at all times be open to inspection of the owner or owners of any property assessable under the provisions of this statute."

The assessment so made by the Railroad and Public Utilities Commission is required to be fixed at the "Actual cash value" of the property taxed, section 1526 of the Code providing:

"Assessment at Actual Cash Value, Ascertained From What.—Upon examination of every such schedule and statement and all other evidence taken by them, the said commission shall proceed to ascertain and determine the value of said property within the state for taxation and assess the same accordingly, taking into consideration the capital stock, corporate property, franchises, and gross receipts, the market value of the shares of stock and bonded indebtedness, and such other evidence as is afforded by said statements and schedules or other evidence taken to enable them to fairly and equitably fix the actual cash value of the properties of such persons."

[fol. 10] In the case of railroads operating in Tennessee and in other states, section 1527 of the Code directs that "the proportionate share of the value of the intangible property * * * growing out of the use of their tangible property in this state under their franchises, privileges, and contracts, shall have its situs in this state" etc. But no statutory method is prescribed for the guidance of the assessor in determining what proportion of the whole is thus to be assigned or allocated to Tennessee.

Distributable property of railroads is defined, for assessment purposes, in section 1528 of the Code, as including franchises, choses in action, intangible property, personal property without actual situs, roadbed and rolling stock. The section directs that "after ascertaining the value of such distributable property wherever situated within the state, and after having deducted from its value one thousand dollars," the Commission shall apportion the remainder among the several counties and towns according to track mileage.

Localized property of railroads, required to be valued separately from distributable property, is defined by section 1529 of the Code as including "depot buildings and [fol. 11] other property, real, personal and mixed, having an actual situs."

It is provided by section 1533 of the Code that assessments made by the Railroad and Public Utilities Commission shall be filed on or before the first Monday of August of the assessment year, and that the taxpayer, within ten days from said date, may appear and file exceptions to the assessment, supported by such evidence as the taxpayer may submit as to the value of the property assessed. It has been for many years found impracticable by the Commission to file its assessment of railroad properties by the date fixed in the statute; and the assessment here involved was made and published on August 22, 1938, the Commission then advising petitioner, by notice signed by its Secretary, that petitioner would have ten days from August 22 within which to file its exceptions. Exceptions were filed by petitioner, as hereinafter shown, within said ten-day period.

By Section 1534 of the Code it is made the duty of the Railroad and Public Utilities Commission to file with the State Board of Equalization the assessments made by them, together with such records as may be deemed necessary. Upon the record so filed, together with any additional evidence offered or taken, the Board of Equalization is required to find and fix the "correct value" of the property to be assessed; and it is provided in section 1534 of the Code that the assessment "shall not be deemed complete until corrected and approved by the said board of equalization."

After final action by the Board of Equalization it is required to certify "the valuation fixed by it" to the Railroad

and Public Utilities Commission and the Commission is required to certify to the Comptroller the amount of the state tax to be collected on the assessment; and to the several counties and incorporated cities and towns the amounts or values to be taxed by them.

IV

Acting under the apparent authority of the several code sections referred to in section III of this petition, the Railroad and Public Utilities Commission, in the early part of 1938, transmitted to petitioner a questionnaire calling for the several schedules and data required by said Code sections for consideration by them, for the proper determination of the actual cash value of petitioner's properties in Tennessee subject to ad valorem taxation; all of which information was duly and properly furnished to the Commission by the petitioner under the oath of its President and attested by its Secretary. The said return is a part of the record of the proceedings here under review and when said record is properly certified, as herein prayed, will be subject to inspection and examination by the court.

On August 22, 1938, the Railroad and Public Utilities Commission issued and transmitted to petitioner its tentative assessment of petitioner's properties, stating the conclusion of the Commission to be that the value of the entire property of petitioner's system of railroad, consisting of 1,115.35 miles of main track, with side tracks, depot buildings and other appurtenances, and including choses in action and intangible property, etc. is \$23,996,604.14. Of this system value the Commission found the value of petitioner's distributable property in Tennessee, less the legal exemption of \$1,000.00, to be \$12,925,944.00, and the value of petitioner's localized property in Tennessee to be \$3,297,250.00, making a total value or assessment of petitioner's property in Tennessee in the sum of \$16,223,194.00. A true copy of said assessment as filed by the Commission and issued by it to petitioner is herewith filed and made a part of this [fol. 14] petition as Exhibit 2 thereto, but the same need not be copied.

Ex. 2

In the letter transmitting said tentative assessment to petitioner the Railroad and Public Utilities Commission advised petitioner that it would be allowed ten days from

August 22, 1938, within which to file exceptions to the assessment. Written exceptions were duly filed by petitioner with the Railroad and Public Utilities Commission on August 31, 1938, wherein petitioner contended and endeavored to show to the Commission that the total actual value of its system properties was not in excess of \$16,021,298, and otherwise endeavored to show to the Commission that prejudicial errors in its assessment had been committed, particularly in the method followed by the Commission in valuing petitioner's system properties and in allocating or apportioning such value between Tennessee and the three other states in which petitioner's system properties are located. A true and accurate copy of said exceptions is filed herewith and made a part of this petition as Exhibit 3 thereto, but the same need not be copied.

Ex. 3

On the date said exceptions were filed with the Railroad and Public Utilities Commission, August 31, 1938, petitioner also filed with the Commission statistical tables and charts and various other items of evidence, verified by affidavit, supporting the values and contentions made by petitioner in its said exceptions, all of which were received by the Commission and ordered to be filed, and subsequently certified by the Commission to the State Board of Equalization, constituting a part of the record upon which the final assessment or valuation of petitioner's property was made by said State Board of Equalization, to be certified to the court under the writ of certiorari herein prayed.

The said exceptions and proof were presented to the Railroad and Public Utilities Commission in oral argument on September 14, 1938; and on October 5, 1938, the Commission entered an order denying said exceptions.

Said order consisted of a single paragraph, in words and figures as follows:

"Written exceptions to the tentative assessment were filed; new evidence, affidavits and exhibits were also filed and argument heard. Evidence indicated the corporation's net railway revenues were increasing since the tentative [fol. 16] assessment was made and that its present financial condition was good, that is, it had on hand \$3,569,801 in cash and non-taxable Federal bonds and notes. After carefully considering all evidence and other matters submitted, we

are of the opinion and find that exceptions should be, and they are, hereby denied."

On October 7, 1938, petitioner filed its written exception to the action of the Railroad and Public Utilities Commission in denying its said exceptions of August 31, 1938, and prayed an appeal to the State Board of Equalization, to the end that said exceptions might therefor — considered and the valuation and assessment of petitioner's properties reduced and equalized in accordance therewith. Petitioner further prayed that all of the evidence considered by the Railroad and Public Utilities Commission in making its said assessment, including the evidence filed by the petitioner, the record of the hearing of September 14, 1938, the exceptions filed by petitioner, and the several orders and findings of the Commission, be certified and transmitted to the State Board of Equalization in the manner prescribed by law for its proper review and action. On said date an order was signed by the members of the Commission grant-[fol. 17] ing said prayer and appeal and directing the Secretary of the Commission to certify the record to the State Board of Equalization as prayed. A true copy of said prayer for appeal and the order of the Commission thereon, dated October 7, 1938, is herewith filed and made a part of this petition as Exhibit 4 thereto, but the same need not be copied.

Ex. 4

The said appeal and order thereon was duly filed by the Railroad and Public Utilities Commission with the Secretary of the State Board of Equalization on October 13, 1938, and the record of the Commission was transmitted to and filed with the State Board of Equalization. Petitioner was notified that its exceptions as filed with the Railroad and Public Utilities Commission would be considered by the State Board of Equalization on November 2, 1938, and said hearing was accordingly held, upon the evidence and record transmitted to the Board by the Railroad and Public Utilities Commission.

After holding the assessment and petitioner's appeal [fol. 18] under consideration until December 9, 1938, the State Board of Equalization has announced that it approves the assessment without change or modification, as made and published by the Railroad and Public Utilities Commission of Tennessee, and unless restrained by process from this Court, the said Board will proceed at once to certify said

assessment to the Railroad and Public Utilities Commission, to the great prejudice and injury of petitioner.

V

While section 1534 of the Code directs that the assessments made by the Railroad and Public Utilities Commission "shall not be deemed complete until corrected and approved" by the State Board of Equalization, the assessments made are essentially the result of action by the Commission. The State Board of Equalization made no attempt to arrive at a valuation of petitioner's properties independently of the conclusions of the Commission, in the proceeding under review, but accepted the findings of the Commission as *prima facie* correct, and based its findings of value thereon.

[fol. 19] The assessment made and published by the Railroad and Public Utilities Commission on August 22, 1938, recites that in valuing petitioner's property the Commission would look to and consider the evidence afforded by the returns, statements and schedules made by petitioner "together with such other evidence taken as to enable this Board to fairly and equitably fix the actual cash value of the property to be assessed, making due allowance for all non-taxable securities held." The "other evidence" looked to and considered by the Commission was not reduced to writing, as required by section 1523 of the Code, and no opportunity was afforded petitioner to inspect and respond to it. Petitioner has been given no information or notice of its nature or purport. Consideration by the Commission of such other evidence was illegal and arbitrary and beyond the statutory power and authority of the Commission, rendering the assessment so made illegal, null and void.

VI

Notwithstanding the declaration of the assessment published by the Railroad and Public Utilities Commission that "due consideration" would be given to non-taxable [fol. 20] securities owned and held by petitioner, the assessment affirmatively shows that no deduction whatever was made from the "value of entire property," as found by the Commission on the last page of its assessment, on account of the non-taxable securities and choses in action held by petitioner and shown in its tax return filed with

the Commission in the sum of \$2,484,180; all of which consisted of interest bearing securities and corporate stocks exempted from assessment for ad valorem taxation in Tennessee by Public Acts 1931 (2nd Extra Session), chapter 20; and \$1,657,830 of which consisted of tax exempt bonds of the United States. Not only did the Commission fail and refuse to deduct the value of said securities from the value found by it of petitioner's "entire property," but in responding to petitioner's exceptions the Commission expressly referred to petitioner's ownership of "cash and non-taxable Federal bonds and notes" as ground for overruling the exceptions and sustaining the assessment. The assessment of the value of stocks and bonds of petitioner for ad valorem taxation, while such property owned by other taxpayers is exempt from such assessment, is illegal, null and void, and the failure to exclude such property from [fol. 21] the assessment under review is an unjust, illegal and unreasonable discrimination against petitioner; and violates and denies the rights guaranteed to petitioner by the due process of law and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and by Article I, section 8 and Article II, Section 28, of the Constitution of Tennessee.

VII

Following its established practice in assessment of railroad properties the Railroad and Public Utilities Commission undertook to find and ascertain the value of petitioner's property subject to taxation in Tennessee by finding a value for its system properties in the four states of Tennessee, Alabama, Georgia and Kentucky, and after deducting from the system value so found the value of the localized property in the four states, the remainder was allocated to Tennessee as distributable property upon the basis of the ratio of the miles of track in Tennessee to the miles of track in the four states. The value so found for distributable property in Tennessee was then distributed among the several lines of railroad and divisions in Tennessee in accordance with the Commission's finding of the relative value of the miles of track of the several lines and divisions.

The amount stated by the Commission as its finding of value of the entire property, \$23,996,604.14 is an arbitrary value which is not supported nor sustained by any evi-

dence submitted to or property considered by said Commission. It is judicially recognized in Tennessee, as in all other states of the Union, that the value of the property comprising a railroad system is measured and determined by the income yielded by such property and which it is capable of yielding under proper and prudent management. In making the assessment under review the Commission repudiated such measure of value, and arrived at an arbitrary value by means and methods which it has not seen fit to disclose, and which are not deducible from the assessment made and published by the Commission.

The evidence constituting the record upon which said assessment was made discloses that the net result of petitioner's operations, including income and profits from non-operating property as well as its railway operations, resulted in an aggregate deficit for the 7-year period 1931-[fol. 23] 1937, of \$2,708,959; each year producing a deficit except 1936, in which the corporate profit was only \$51,999, brought about by a postponement and deferment of maintenance expenditures subsequently to be made up. No dividends have been paid on petitioner's capital stock since 1931. Recognizing that the value of the property comprising the system must be determined, for purposes of taxation, by the income produced by the property and available for the payment of interest and rents, the evidence submitted to the Commission by the petitioner showed that such income for the 7-year period ending December 13, 1937, averaged \$961,277.99; that amount being the income produced by the property and available for the payment of interest and rents and some other fixed charges of minor amount. Capitalization of this average annual income at 6 per cent would produce the sum of \$16,021,298, and this sum measures the full limit and extent of the value of all the taxable property of the petitioner, for purposes of ad valorem taxation, including the lines of the Western & Atlantic Railroad and the Paducah and Memphis Division which are not owned by petitioner but are rented from the State of Georgia and the Louisville and Nashville Railroad Company respectively. The finding of the value of said properties in excess of said sum is supported by no [fol. 24] evidence presented to or properly considered by the Railroad and Public Utilities Commission and the State Board of Equalization; and is arbitrary and unreasonable, and should be so held and declared by the court. The evi-

dence contains no basis for any finding by said Commission, the State Board of Equalization, or by this court, that the reasonable earning capacity of petitioner's properties is or will be in the years immediately ahead in excess of the average amount earned during the 7-year period ending December 31, 1937, and the evidence therefore affords no basis for adding to the earning power as disclosed by said 7-year record any future or potential earning power in excess of that shown.

The Nashville, Chattanooga & St. Louis Railway is a combination of three separately owned lines of railroad, the value of each being greatly dependent upon the continuance of the combined operation by petitioner as a single system. The value of the property has been greatly reduced in recent years by the imposition of increased burdens of taxation by the federal, state, county and municipal governments, operating to materially reduce the income produced by the properties. In the operation of the property for profit the petitioner is in ever increasing degree hampered and em-[fol. 25] barrassed by governmental regulations from which its traffic carrying competitors, motor busses and trucks, river barges and airplanes are exempt; and the inroads made by these competitors upon the volume of traffic previously carried by petitioner is steadily increasing year by year. The lines of railroad operated by petitioner are located in an area which does not produce traffic in sufficient volume to support and sustain their operation, and such operation is made possible only by the ability of the petitioner to bring to its lines competitive traffic which, but for the deficiency of petitioner's operation and solicitation, would move over other lines of railway, so that the operating profit of petitioner's railway shown by the evidence is largely due to the nature and efficiency of petitioner's operation rather than to any natural advantage of location or to the condition or value of the roadway and equipment.

The particular position of the properties of the petitioner, as compared with the average railroad in the United States, as shown by the evidence submitted to the Railroad and Public Utilities Commission and to the State Board of Equalization, is most unfavorable. Due to the nature of the traffic handled, the curves and grades on the line of railway, the ratios of operating costs on petitioner's railway [fol. 26] to the gross revenues produced, exceeds the national average, to the extent that petitioner's freight ex-

pense per 1,000 revenue ton miles is 50 percent greater than the national average. The ratio of employe wages to gross revenues on petitioner's railway is greater than the national average; all of which is fully shown and explained in the evidence submitted to said Commission and Board.

Petitioner, therefore, avers that the value placed upon its system properties by the Commission and by the State Board of Equalization, nearly 50 percent greater than the value computed by capitalization of its recent earnings, is shown by the evidence to be unreasonable and arbitrary to the extent that taxation on the basis of such valuation will amount to an unlawful confiscation of petitioner's property, and to a denial of the rights and immunities guaranteed to petitioner by Article I, section 8 and Article II, section 28, of the Constitution of Tennessee, and by the due process of law and equality clauses of the Fourteenth Amendment to the Constitution of the United States.

As illustrative of the arbitrary methods pursued and followed by the Railroad and Public Utilities Commission and by the State Board of Equalization, in arriving at their [fol. 27] valuation of petitioner's distributable property in Tennessee, the evidence shows that since their assessment of 1936, 36.96 miles of main track were abandoned and scrapped by petitioner, on which mileage an assessment of \$158,302 was made in 1936. Instead of reducing the assessment of 1938 by an amount equal to the assessment previously placed upon this abandoned mileage, the Commission so adjusted its valuation of distributable property for the system that the reduced mileage in Tennessee would produce a valuation of Tennessee distributable property at exactly the same amount as the greater Tennessee mileage had produced in 1936. This was accomplished by adding the sum of \$236,607 to the value found for the entire property. Failure of the Commission to reduce the aggregate valuation of distributable property by the assessed value of the abandoned mileage was arbitrary and unreasonable, in violation of the constitutional provisions herein above cited and invoked.

Petitioner avers that its exceptions filed to the tentative assessment made by the Railroad and Public Utilities Commission on August 22, 1938, were not given consideration on their merits as required by the statute, and that the evidence [fol. 28] offered by it in support of said exceptions was given no consideration whatever. The response made

by the Commission to the exceptions contained the following:

" * * * Evidence indicated the corporation's net railway revenues were increasing since the tentative assessment was made and that its present financial condition was good, that is, it had on hand \$3,569,801 in cash and non-taxable Federal bonds and notes. * * * "

This was the sole response made to the several hundred pages of evidence submitted by petitioner, and no other reasons were assigned for overruling the exceptions. A single month's operations were reported between the date of the tentative assessment and the date of the Commission's order overruling the exceptions. The only comparable comparison of such operations was the corresponding month of the previous year, and the evidence shows a decrease in operating revenues (August, 1938, as compared with August, 1937) of \$4,770. A decrease in operating expenses of \$143,689 was accomplished by temporary economies, as shown by the evidence, resulting in an increase in net railway operating income. The evidence fully shows [fol. 29] that this apparent increase was brought about by economies and curtailments in maintenance which cannot be continued, and that results from a single month's operations constitute no basis for the valuation of a railroad property. The income statement offered in evidence for the eight months of 1938 showed a decrease in operating revenues, as compared with the eight months of 1937, of \$1,039,000, and a decrease in net railway operating income of \$27,000; such decrease having been held to that figure by temporary economies as in the month of August. The net corporate deficit sustained by petitioner from its 1937 operations was \$471,000, and the record of 1938 afforded no basis for an estimate of a smaller deficit for the entire year. The finding of the Commission that the petitioner's net railway revenues were increasing, as a basis for overruling the exceptions, is therefore not supported by the record, and the additional reference by the Commission to the operating capital and non-taxable bonds held by petitioner is a finding of fact wholly irrelevant to the value of the properties assessed.

Petitioner further avers and shows that the valuation and assessment of its properties by the Railroad and Public Utilities Commission, and by the State Board of Equaliza-

[fol. 30] tion, certification of which is now sought to be superseded, were not predicated upon, and are not supported by any facts or evidence of record, and that there was no evidence before the Commission nor the State Board of Equalization, and none in the record to be certified to this Court, to sustain either the several items of assessment or the aggregate thereof. Wherefore, petitioner charges and avers that the assessment by the Railroad and Public Utilities Commission, and the final action of the State Board of Equalization approving and directing the certification of said assessment, are arbitrary, capricious, and illegal, and without any evidence to sustain them, and therefore violate and contravene the provisions of Article I, section 8, and Article II, section 28, of the constitution of Tennessee, and the "due process of law" and "equality" clauses of the Fourteenth Amendment to the Constitution of the United States.

[fol. 31]

VIII

Having fixed the value of the distributable property of petitioner's railroad system, in Tennessee, Alabama, Georgia and Kentucky, at \$18,022,133, the Railroad and Public Utilities Commission allocated such value to Tennessee, for the purposes of the assessment, on the basis of the ratio of main track mileage in Tennessee to main track mileage of the system. This resulted in the fixing of the value of petitioner's distributable property in Tennessee at \$12,926,944, or 71.73 per cent of the value of the distributable property for the system.

This method of allocation adopted by the Railroad and Public Utilities Commission, and followed by the State Board of Equalization, is shown to be unreasonable, arbitrary and grossly prejudicial to the petitioner by the evidence in the assessment record of the relative value per mile of petitioner's lines of railroad in Tennessee and in the three other states named. The result produced by allocating system value to Tennessee on the basis of the ratio of main track mileage is unreasonable, arbitrary and confiscatory, in that values existing only in the other states are by this means imported into Tennessee and there given a situs for [fol. 32] taxation, resulting in an assessment for taxation in Tennessee, grossly in excess of values subject to taxation by the State of Tennessee and its several governmental subdivisions. This method of allocation, therefore contra-

venes and violates the right and immunities guaranteed and preserved to the petitioner by Article I, section 8, and Article II, section 28 of the Constitution of Tennessee, and by the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

Petitioner's system of railway comprises a number of branch lines which have value only as producing traffic for the main lines of the system. These branch lines produce no net income and are now and for many years past operated at a loss. Seventy-five per cent of this branch line mileage of petitioner's system lies in Tennessee. The branch lines are equipped for the most part with rails of much lighter weight than the main lines, and only 15 per cent in number of the locomotives of petitioner's system are ever used on such branch lines. None of the larger locomotives of the system move over the branch lines. Constituting 38 per cent of the system track mileage the branch lines, in 1937, handled only 4.4 per cent of the cross ton miles of the system, and only 1.2 per cent of the system [fol. 33] passenger miles. The tonnage density per mile of branch line track was only 7.4 per cent of the tonnage density of the main line tracks; all of which is shown in the evidence submitted to the Railroad and Public Utilities Commission and the State Board of Equalization.

The Interstate Commerce Commission, by a study extending in much detail through a number of years, made a valuation of the property of the several lines of railroad comprising the petitioner's system, as of June 30, 1916, which valuation has been brought to date by current entries of expenditures for additions and betterments, and of retirements; and such valuation, except the value of equipment, is allocated by the Interstate Commerce Commission among the several states in which the property is located. This valuation, brought to December 31, 1937, shows the value of petitioner's operating property in Tennessee, excluding equipment, to be only 64.11 per cent of the value of such property throughout the system.

For the year 1937 the operating property of the system produced a net railway operating income of \$840,290. An apportionment of the gross revenues and operating expenses among the several states, by a method not criticized or challenged by the Railroad and Public Utilities Com-[fol. 34] mission, showed that the Tennessee properties comprising petitioner's system produced only \$432,556 of this

net railway operating income, or 51.5 per cent of the income for the system. For the year 1937 the net railway operating income per mile of main track in Tennessee was \$541, while the net railway operating income per mile of main track outside Tennessee was \$1,293; the per mile income in Tennessee being only 41.84 per cent of the per mile income outside Tennessee.

Other facts detailed in the evidence submitted to the Commission and to the State Board of Equalization combine to demonstrate that the value of petitioner's distributable property in Tennessee, subject to taxation by Tennessee and its subdivisions, is not in excess of 64.11 per cent of the value of such distributable property of petitioner's entire system; and any assessment of distributable property in Tennessee produced by allocating or assigning to the State more than 64.11 per cent of the value for the system is unreasonable, arbitrary and confiscatory, and in violation of the constitutional rights and immunities cited hereinabove.

[fol. 35]

IX

In making the allocation of the value of system distributable property of Tennessee, for assessment purposes, the Railroad and Public Utilities Commission and the State Board of Equalization included as main track mileage the 3.65 miles of track, located in Davidson County, Tennessee, known and referred to as the West Nashville branch. This track, while formerly serving a station known as the West Nashville Agency, is no longer used for any of the purposes of a main track. It produces no revenue other than that accruing from switching operation within the Nashville Terminals. It is a yard or industrial track, serving industries located in the Western part of the city of Nashville, and immediately adjacent thereto. The inclusion of this track in computing the ratio of main track mileage in Tennessee to system mileage, as a basis of allocating or assigning system values to the State of Tennessee, for purposes of taxation, is unreasonable and arbitrary, and an abuse of any discretion lawfully vested in or exercised by the Commission and State Board of Equalization. If the use of mileage in Tennessee to mileage outside Tennessee, as a basis of assigning values to Tennessee, [fol. 36] should be approved by the Court, the petitioner is entitled to have the result corrected by the court so as to

eliminate said arbitrary and unreasonable inclusion of the West Nashville Branch as main track mileage.

X

By the laws of Tennessee the property of railroads, telephone and telegraph companies, electric power and light companies, and a few other enumerated classes of public service companies, is assessed for ad valorem taxation by the Railroad and Public Utilities Commission and the State Board of Equalization, in the manner hereinabove recited and described. The property of all individuals and partnerships, and the property of corporations other than those enumerated, is assessed locally by county and municipal tax assessors.

The property of The Nashville, Chattahoochee & St. Louis Railway, petitioner herein, is located in thirty-one counties, and petitioner is subject to ad valorem taxation on its property in all of said counties and in numerous taxing districts and municipalities within said counties. Assessments of petitioner's property, certified to the several county court [fol. 37] clerks and mayors of incorporated towns, in the manner hereinabove described, are subject to taxation at the same rate as property assessed by the local county and municipal tax assessors, and for the same purposes. The taxes payable by petitioner to the State of Tennessee, certified by the Railroad and Public Utilities Commission to the Comptroller of the State, as directed in section 1536 of the Code, are computed by applying to the assessment of petitioner's property the same state tax rate which is required to be applied to assessments made by the county tax assessors in the several counties of the State.

The Constitution of Tennessee does not permit classification of property for purposes of ad valorem taxation, but directs in Article II, section 28:

"All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct; so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than [fol. 38] any other species of property of the same value."

By statute of general application the State of Tennessee has levied a tax on all property of eight cents on the one

hundred dollars of value. The average rate of taxation by the several counties of the State for 1937 was \$2.22 per one hundred dollars of taxable value, and this rate will be no less for the years 1938 and 1939. In addition, the several municipalities and taxing districts in which petitioner's property lies apply a tax rate in substantial amount.

The property of individuals, partnerships, and all corporations not assessed by the Railroad and Public Utilities Commission, is assessed for ad valorem taxation biennially in the odd years. The assessments made by the several county and municipal tax assessors in 1937 constitute the basis for the taxation of property assessed by them for the year 1938, so that petitioner will be required to pay its 1938 taxes upon the assessments made by the Railroad and Public Utilities Commission, here under review, while individuals, partnerships, and corporations generally will pay 1938 taxes on the basis of assessments made by county and municipal tax assessors in 1937.

[fol. 39] For more than forty years, up to and including the assessments now in force, the several county and municipal tax assessors in the State of Tennessee have voluntarily, intentionally, wilfully and systematically assessed property within their several jurisdictions at amounts substantially less than its actual cash value. The evidence constituting the record on which the assessment of petitioner's property now under review was made, shows that this intentional and systematic plan and scheme of undervaluation is of long-standing, and that it has been repeatedly brought to the attention of the General Assembly of the State of Tennessee, without curative or remedial action on the part of the General Assembly. Whatever its origin, the practice is so widespread, that county and municipal tax assessors, have found it necessary to follow said practice or scheme in order to prevent the property within their respective jurisdictions from paying a greater proportionate tax under the state rate of taxation than the principles of equality permit. In no county of the State is the property of individuals, partnerships and general corporations assessed at more than 75 percent of its actual cash value, and the average of all assessments made by the several county and [fol. 40] municipal tax assessors in the State of Tennessee is not in excess of 66 $\frac{2}{3}$ percent of the actual cash value of the property assessed, as the basis for ad valorem taxation for the year 1938.

The valuation and assessment of petitioner's property was made by the Railroad and Public Utilities Commission and the State Board of Equalization on the basis of 100 per cent of the taxable value of such property, and is in fact greater than the actual one hundred percent value of the property assessed.

Petitioner avers that the application of the state, county and municipal tax rates to the assessment made of its property for taxation by the state and its several subdivisions would require and exact of petitioner a substantially greater tax than is required and exacted of the property of other tax-payers and other property of like value within the same taxing jurisdictions; that the result so produced would be the same as if the property of petitioner were taxed at a rate one-third higher than the rate applied to the property of other taxpayers. Petitioner, therefore, avers that the action of the State Board of Equalization in certifying the valuation fixed by it upon petitioner's property to the Railroad and Public Utilities Commission; and the action of the Commission in computing the tax due the State of Tennessee on the basis of such valuation, and certifying the amount [fol. 41] of property of petitioner to be taxed by the several counties and incorporated cities or towns on the basis of such valuation, would amount to a denial to the petitioner of the rights, privileges and immunities guaranteed and preserved to it by the Constitution of Tennessee, in Article I, section 8, and Article II, section 28, thereof, and by the due process of law and equality clauses of the Fourteenth Amendment to the Constitution of the United States.

XI

Unless restrained by proper process issuing from this Court, it will be the duty of the State Board of Equalization to certify said valuation of \$—— fixed by it as the taxable value of petitioner's property in Tennessee, as above shown, to the Railroad and the Public Utilities Commission; and unless restrained by such process, the State Board of Equalization will promptly make said certification, which it is now about to do. Unless such certification is prevented by process from this court, the Railroad and Public Utilities Commission will promptly make its computation of the taxes due by petitioner to the State of Tennessee on the [fol. 42] basis of said valuation, and will issue its certificates to the several county court clerks and mayors of incor-

porated town and cities, in which petitioner's property lies, of the amounts and values to which the several tax rates of said counties and towns of 1938 will be applied; whereupon the petitioner would be put to the necessity of filing numerous suits against the proper authorities of each such county and town for the protection of its rights hereinabove asserted and disclosed. Such multiplicity of suits would result in unreasonable and extraordinary expense, vexation and delay to which petitioner should not, in equity and justice, be subjected.

The several facts, rights and equities set out and referred to in the foregoing petition will more fully and certainly appear from the orders and minutes of the State Board of Equalization and the Railroad and Public Utilities Commission, and the record, evidence and proceedings constituting the assessment record of said Commission and Board with respect to petitioner's property.

The assessment and valuation of petitioner's property as made by the Railroad and Public Utilities Commission, and approved and certified by the State Board of Equalization, [fol. 43] is by statute (Code section 1535), made conclusive and final, with no right of appeal or writ of error preserved to petitioner therefrom. But your petitioner is advised that under the Constitution, laws and statutes of the State of Tennessee it is entitled by the writs of certiorari and supersedeas to have brought before this Court the orders, minutes, records and proceedings of the State Board of Equalization and the Railroad and Public Utilities Commission, in the premises, to the end that the illegal and unconstitutional actions and assessments hereinbefore set out and described may be declared null and void and the erroneous assessments corrected.

XII

The Nashville, Chattanooga & St. Louis Railway is a railway system operating in and through the States of Tennessee, Alabama, Georgia and Kentucky, transporting freight and passengers in interstate commerce as a common carrier by rail; and as such is subject to re-ulation by the Interstate Commerce Commission. For many years, 1931-1937, inclusive, its operations have produced an annual corporate deficit in substantial amount, with the single exception of 1936 when a small corporate profit of \$51,999 [fol. 44] was earned as hereinabove shown. These years

of unprofitable operation have been a severe strain upon the resources of petitioner and have operated to prevent it from installing and making improvements and additions and betterments which the modern development of railroad equipment would dictate if the petitioner had been operating at a profit. Said seven years operations have resulted in the net reduction of petitioner's corporate profit and loss account in the sum of \$2,708,959. The imposition of unjust and illegal taxes, payable out of the revenues accruing to petitioner in the operation of its interstate railroad, constitutes an unreasonable and illegal burden by the State of Tennessee and its governmental subdivisions upon interstate commerce, and constitutes a direct impairment of petitioner's ability to properly function as a common carrier in interstate commerce. Petitioner particularly avers that the excessive valuation of its system property by the Railroad and Public Utilities Commission of Tennessee and the State Board of Equalization, as a basis for the assessment of petitioner's properties in Tennessee, the improper, arbitrary and illegal method pursued by said Commission and Board in allocating system values to Tennessee for purposes of assessment and taxation, and the failure and refusal of said Commission and Board to equalize the [fol. 45] valuation fixed by them on petitioner's property in Tennessee so as to assess petitioner's property for taxation on the same ratio to actual cash value as the property of other taxpayers is assessed, all as hereinabove shown and as more particularly shown in the evidence and records of said Commission and Board, constitute and unreasonable arbitrary and direct burden upon interstate commerce, in violation of the Constitution and laws of the United States, and particularly Article I, section 8, of the Constitution of the United States vesting the Congress with power to regulate commerce among the several states, and the laws enacted by the Congress pursuant to said power.

XIII

If the Court should rule that the valuation of petitioner's system property made by the Commission and the State Board of Equalization should be permitted to stand, the proper allocation of the system value of distributable property to Tennessee, and the proper equalization of Petitioner's assessment with the assessment of the property of other taxpayers, as shown hereinabove and sustained by

the evidence and record to be certified, would produce the following result:

[fol. 46] Value of system distributable property	\$18,022,133
Value of Tennessee distributable property	
(64.11% of system value)	11,553,989
Less \$1,000	11,552,989
Value of localized property in Tennessee	3,297,250
Value all property in Tennessee	14,850,239
Value equalized at 66 $\frac{2}{3}$ %	9,900,158

Petitioner avers that the assessment of its property in Tennessee for ad valorem taxation in excess of said amount is the direct result of the unreasonable, arbitrary and illegal action of the Railroad and Public Utilities Commission and the State Board of Equalization, and each of them, in applying to the system valuation found an unreasonable, arbitrary and illegal method of allocating value among the several states in which petitioner's property lies, and in arbitrarily refusing and failing to equalize the value fixed so as to assess petitioner's property on the same basis and relation to actual value as the property of other taxpayers is systematically, intentionally and wilfully assessed by the several county and municipal tax assessors throughout the [fol. 47] State of Tennessee; all said illegal, unreasonable and arbitrary acts and rulings operating, collectively and singly, to deny to the petitioner its rights and privileges guaranteed to it by Article I, section 8, and Article II, section 28, of the Constitution of Tennessee, and by the "due process of law" and "equality" clauses of the Fourteenth Amendment to the Constitution of the United States.

XIV

Petitioner shows to the Court that while it is advised and believes that the assessment of its property by the Railroad and Public Utilities Commission and the State Board of Equalization, because of the facts and reasons hereinabove stated, is in every particular null and void, petitioner is willing and desires to pay its just proportion of taxes to the State of Tennessee and its governmental subdivisions, computed and based upon a proper, just and legal assessment. The state and county taxes for 1938 become delinquent on said date. In order that the State and its subdivisions

may not be unduly delayed in the collection of its just revenue, petitioner is willing, in the event this litigation is not finally determined prior to said delinquent date to dis-[fol. 48] regard all and every illegality and irregularity and technical deficiencies in said assessment to the extent of an aggregate assessment of its property for taxation in Tennessee in the sum of \$10,000,000; of which aggregate assessment \$2,197,167 (two-thirds of the Commission's valuation of localized property in Tennessee) shall be the assessment upon petitioner's localized property in Tennessee, and the remainder \$7,802,833 shall be the assessment on petitioner's distributable property in Tennessee; said aggregate assessment of localized property to be apportioned by the Railroad and Public Utilities Commission among the several items of localized property assessed by reducing the value placed by the Commission upon each such item so as to make the assessment two-thirds of such valuation; and the aggregate assessment of petitioner's distributable property, \$7,802,833 to be allocated and assigned to the several divisions and lines of railroad constituting petitioner's system in Tennessee in accord with the findings made by the Railroad and Public Utilities Commission with respect to the relative values of the several divisions and lines, treating the 3.65 miles of the so-called West Nashville Branch, referred to in section IX hereof, as an industrial or side track and not as a main track for the purposes of said assessment and distribution.

[fol. 49] Petitioner, therefore, expresses its willingness that the State Board of Equalization certify to the Railroad and Public Utilities Commission a valuation of petitioner's property in Tennessee for purposes of taxation in the aggregate sum of \$10,000,000, divided between localized property and distributable property, as hereinabove set out, without prejudice to either party hereto or to any interested party with respect to the final determination of the issues herein presented; and that the Railroad and Public Utilities Commission certify the proper proportion and amounts of said \$10,000,000 valuation to the several counties and municipalities, in accord with the division and apportionment set out in the preceding paragraph hereof. Petitioner will pay to the State and to the several counties and cities the taxes levied upon its property, in accord with the assessment of \$10,000,000 so certified, prior to the said delinquent date, without prejudice to the right of the State

or any of said governmental subdivisions to subsequently demand additional payments in the event the proper and legal assessment and valuation of the petitioner's properties is fixed at a sum in excess of \$10,000,000.

In making this offer to pay its taxes for 1938 on the basis of a valuation of its Tennessee properties at \$10,000,000, [fol. 50] petitioner does not recede from the position and showing herein made that the proper and equalized value of its Tennessee properties for purposes of taxation is less than said sum of \$10,000,000, and if petitioner's position in that respect be finally sustained, after payment on the basis of said \$10,000,000 valuation, petitioner asks that an appropriate order be entered authorizing it to collect back the excess actually paid.

Premises considered, petitioner prays:

(1) That proper process issue making the above named defendants parties hereto;

(2) That the writ of certiorari issue directing and requiring the defendants to certify and produce into this Honorable Court the minutes, orders, proceedings, record and proof, including all evidence as to the assessment of your petitioner's properties now on file with said Board of Equalization or with said Railroad and Public Utilities Commission or considered by them;

(3) That the writ of supersedeas issue superseding the valuation and assessment by the said State Board of Equalization of all the properties of your petitioner, and restraining the certification of the same, except as provided in said Section XIV of this petition, said permitted certification to [fol. 51] be without prejudice to either party hereto or to any interested party; so that your petitioner may proceed to pay in the usual and customary way at the usual time the amount of taxes due from it based upon the assessment in the aggregate sum of \$10,000,000 which it (regardless of illegality) has herein expressed its willingness to have certified;

(4) That upon final hearing the assessment and valuation of all and singular of petitioner's properties be adjudged illegal, null and void, as in contravention of, and not authorized by, the constitution and laws of the State of Tennessee and of the United States; that said assessment and valuation be purged of any and all sums in excess

of the fair taxable value of said properties as shown by the evidence, and of any and all sums added to the value of petitioner's property in Tennessee by the illegal and arbitrary method of allocation applied by the Railroad and Public Utilities Commission and the State Board of Equalization, so that the assessment of petitioner's distributable property in Tennessee shall not exceed 64.11 per centum of the value of its system distributable property; and that the said assessment be equalized with the assessment of other property in Tennessee by reducing the sum of the assessment to 66 $\frac{2}{3}$ per centum of the value found for and [fol. 52] ascribed to petitioner's taxable property.

(5) That the payments, as and when made by petitioner on the assessment on which it herein agrees to pay, be credited against its obligations as finally determined in this proceeding; and that, if such assessment be finally fixed at a sum less than \$10,000,000, an appropriate order be entered permitting petitioner to recover the excess actually paid.

Petitioner prays for such other, further and general relief as it may be entitled to under the pleadings and proof and as the circumstances may require.

This is the first application which your petitioner has made for writs of certiorari and supersedeas in this cause.

The Nashville, Chattanooga & St. Louis Railway, By
Fitzgerald Hall, President. Attest: T. A. Clark-
son, Secretary. (Seal.)

Walker and Hooker, W. A. Miller, Wm. H. Swiggart,
Counsel for Petitioners.

[fol. 53] We are security for all costs.

Wm. H. Swiggart, John J. Hooker.

[fol. 54] *Duly sworn to by Fitzgerald Hall. Jurat omitted in printing.*

[fol. 55]

ORDER

To the Clerk of the Circuit Court of Davidson County:

Upon execution of bond in the sum of Thirty Thousand Dollars, conditioned as required by law in such cases, issue

the writs of certiorari, supersedeas and injunction prayed for in the foregoing petition.

This Dec. 9th, 1938, at 1:15 p. m.

A. B. Neil, Judge.

[fol. 56]

EXHIBIT No. 1 TO PETITION

(A statement of the separate charters under which various divisions and branches of The Nashville, Chattanooga & St. Louis Railway were incorporated and constructed as referred to in Section I of this petition.)

(1) "A line of railway reaching from Nashville, Tennessee to Chattanooga, Tennessee, known as its main line or Chattanooga Division."

Under Acts of 1845-46 Chapter 1, of the General Assembly of Tennessee, approved December 11, 1845, "The Nashville & Chattanooga Railroad Company" was char- [fol. 57] tered to construct a line from Nashville, Tennessee, to Chattanooga, Tennessee. The organization of the Company was perfected January 24, 1848. Be (By) decree of the Chancery Court at Nashville, Tennessee, May 31, 1873, the name of the corporation was changed to "The Nashville, Chattanooga & St. Louis Railway." The Alabama Act No. 123, passed 1849-1850, granted the Company the right to build through Jackson County, Alabama. This Act was amended by an Act of the General Assembly of Alabama, No. 216, 1859-60, granting the Company the right to build a line of railroad from Bridgeport, Alabama, to the Tennessee State line in the direction of Jasper, Tennessee. Under this amendment, the line from Bridgeport to Jasper was completed October, 1867. Under an Act of the General Assembly of the State of Georgia, approved December 29, 1847, the Company was given the right to survey and build its line through Dade County, Georgia.

"(2) "Another line of railway reaching from Chattanooga, Tennessee, to Atlanta, Georgia, known as the Western & Atlantic Railroad or Atlanta Division."

The Western & Atlantic Railroad, extending from Atlanta, Georgia, to Chattanooga, Tennessee, was built and is owned by the State of Georgia. It was leased to The Nash- [fol. 58] ville, Chattanooga & St. Louis Railway from Decem-

ber 27, 1890 to December 27, 1919, at a rental of \$35,001.00 per month. This lease was renewed for a term of fifty years, expiring December 27th, 1969. This lease includes all property of the State pertaining to the Western & Atlantic Railroad except two lots in the City of Chattanooga. The lease provides that we pay into the State Treasury of Georgia \$45,000.00 per month and credit annually to an account called "Additions & Betterments of the Western & Atlantic Railroad", such an amount as will show at the end of any year during the term of the lease, that there has been credited an aggregate amount equal to \$60,000 multiplied by the number of years the lease has to run. Such conditions to become the property of the State.

(3) "Another line of railway reaching from Nashville, Tennessee to Hickman, Kentucky, known as the Northwestern or Nashville Division."

Nashville & Northwestern Railroad Company was chartered under an Act of the General Assembly of the State of Tennessee, January 22, 1852 (Acts of Tennessee, 1851-52, Chapter 74). The charter of this company was reenacted and adopted by the Legislature of Kentucky March 8th, [fol. 59] 1856, (Acts 1855-56, page 80). The Nashville & Northwestern Railroad Company purchased the Hickman & Obion Railroad Company during the year 1855. This now comprises the main line from Nashville, Tennessee to Hickman, Kentucky. The Nashville & Northwestern Railroad Company was sold to the Nashville & Chattanooga Railroad Company through the Chancery Court at Nashville, Tennessee, the sale being confirmed November 21, 1872. Hickman & Obion Railroad Company was chartered December 20, 1853, by an Act of the General Assembly of Tennessee, 1853-1854, Chapter 307, page 685, and by Acts of Kentucky, 1853-54, Chapter 781, Page 348, to build a line from Hickman, Kentucky, to the Mobile & Ohio Railroad in Obion County, Tennessee. The railroad and property of this company were sold to the Nashville & Chattanooga Railroad Company under authority of Acts of Tennessee, 1855-56, Chapter 21, page 3, passed November 16, 1855.

(4) "Another line of railway reaching from Wartrace to Shelbyville, Tennessee, known as the Shelbyville Branch."

The Shelbyville Branch extending from Wartrace to Shelbyville was built by the Nashville & Chattanooga Railroad

Company under and pursuant to an Act of the Legislature of the State of Tennessee 1848-50, Chapter 266, Section 3, [fol. 60] passed January 19, 1850.

(5) "Another line of railway reaching from Tullahoma, Tennessee, to Sparta, Tennessee, known as its McMinnville Branch."

The McMinnville Branch extends from Tullahoma to Sparta, Tennessee, and is made up of the following: McMinnville & Manchester Railroad, chartered by an Act of the General Assembly of Tennessee, February 4, 1850, Chapter 259, page 497, Tullahoma to McMinnville. On July 10, 1875, this company was sold through the Chancery Court of Davidson County, Tennessee, and title vested in the Memphis & Charleston Railroad Company. It was sold by that company to The Nashville, Chattanooga & St. Louis Railway July 29, 1877. The Southwestern Railroad Company was chartered under an Act of the General Assembly of Tennessee, January 31, 1852, Chapter 269, page 462. On July 6, 1871, this company was sold through Chancery Court of Davidson County, Tennessee, at which sale it became its own purchaser. During the year 1877, this property, franchise, etc., was sold to The Nashville, Chattanooga & St. Louis Railway. Under its charter, the line from McMinnville to Sparta was built.

[fol. 61] (6) "Another line of Railway reaching from Decherd, Tennessee, to Columbia, Tennessee, known as its Fayetteville and Columbia Branch."

The Fayetteville and Columbia Branch, extending from Decherd to Columbia, was constructed under charters of Winchester & Alabama Railroad Company, and Duck River Valley Narrow Gauge Railroad Company. The Winchester & Alabama Railroad Company was chartered by Acts of General Assembly of Tennessee, February 9, 1850, Chapter 56, Section 6; revised by Act passed December 5, 1851, and again by Act of 1851-52, Chapter 6, page 310. Under this charter, the line from Decherd to Fayetteville was built. This road was sold through Chancery Court, Nashville, Tennessee, decree dated June 28, 1875, to Memphis & Charleston Railroad Company, and by that company to The Nashville, Chattanooga & St. Louis Railway on July 28, 1877. The Duck River Valley Narrow Gauge Railroad Company was chartered by the Chancery Court at Waverly,

Tennessee, November 4, 1872. This property was sold to the Nashville, Chattanooga & St. Louis Railway November 23, 1877. Under this charter, the line from Columbia to Fayetteville was constructed.

[fol. 62] (7) "Another line of railway reaching from Elora, Tennessee, to Gadsden, Alabama, known as its Huntsville & Gadsden Division."

The Huntsville and Gadsden Branch, which extends from Elora, Tennessee, to the Tennessee River, and from the Tennessee River to Gadsden, Alabama, was constructed under charters of the Winchester & Alabama Railroad Company. The original charter of the Winchester & Alabama Railroad Company was granted by an Act of the General Assembly of the State of Tennessee, February 9, 1850, Chapter 56, Section 6. Under this charter, the line from Elora to the Alabama State Line was built. The Huntsville & Elora Railroad Company was chartered by the Acts of the General Assembly of the State of Alabama, No. 163, page 289, February 8, 1887. Under this charter, the line was built from Huntsville to the Alabama State Line in the direction of Elora, Tennessee. The Tennessee & Coosa Railroad Company was chartered under a Special Act of the State of Alabama January 16, 1844 (Acts 1844-45, No. 220, Page 170). Under this charter, the line from Gadsden to the Tennessee River at Gunter's Landing; and from the river at Hobbs Island to Huntsville was constructed. The properties and franchise of these three underlying corporations [fol. 63] were acquired by the purchase of The Nashville, Chattanooga & St. Louis Railway and conveyed to it by deeds on July 28, 1877, October 28, 1887, and April 6, 1891, respectively.

(8) "Another line of Railway reaching from Cowan, Tennessee, to Palmer, Tennessee, known as its Tracy City Branch."

The Tracy City Branch from Cowan to Tracy City was originally constructed by the Sewanee Mining Company under charter granted by the Acts of Tennessee, February 10, 1852, (Acts of 1851-52, Chapter 284, page 521; later amended by Acts of 1853-54, Chapter 298, page 620). The road was sold at foreclosure and passed through many hands until the Tennessee Coal, Iron & Railroad Company became the owner on August 31, 1866. By deed January

1, 1887, the latter company conveyed said railroad to The Nashville, Chattanooga & St. Louis Railway by deed recorded in deed book 12, page 501, at the Register's Office of Franklin County, Tennessee. In the year 1903, The Nashville, Chattanooga & St. Louis Railway, under provisions of its own charter, extended the branch to Coalmont, Tennessee, and in the year 1916, extended it to Palmer, Tennessee, its present terminus, in the Grundy County coal field.

[fol. 64] (9) "Another line of railway reaching from Bridgeport, Alabama, to Pikeville, Tennessee, known as the Sequatchie Valley Branch."

Sequatchie Valley Branch, from Bridgeport to Pikeville, was constructed from Bridgeport to Jasper under an amended Act of the General Assembly of Alabama, No. 216, 1859-60. The line from Jasper to Pikeville was constructed under the charter of the Sequatchie Valley Railroad Company, granted by an Act of the General Assembly of Tennessee, December 9, 1868, Chapter 11, page 93.

(10) "Another line of railway reaching from Dickson, Tennessee, to Allens Creek, Tennessee, known as the Centreville Branch."

The Centreville Branch extending from Dickson to Allens Creek was constructed under the charters of the Nashville & Tuscaloosa Railroad Company and Southern Iron Company. Nashville & Tuscaloosa Railroad Company was chartered under the General Acts of Tennessee, 1875, Chapter 142. By deeds March 13, 1883, and June 20, 1884, its line from Dickson to the Lewis County line was conveyed [fol. 65] to The Nashville, Chattanooga & St. Louis Railway. The Southern Iron Company was chartered February 26, 1889, under the laws of the State of Alabama. Its line from Kimmins to Allens Creek was purchased by The Nashville, Chattanooga & St. Louis Railway by deed dated September 24, 1892.

(11) "Another line of railway extending from Paducah, Kentucky, through Paris, Tennessee, Lexington, Tennessee, Jackson, Tennessee, to Memphis, Tennessee, known as the Paducah & Memphis Division."

This Division is leased from the Louisville & Nashville Railroad Company for 99 years from December 14, 1895, at

a rental equivalent to five per cent on the cost of the road and five per cent additional on the cost of all improvements and betterments. It is composed of the Paducah, Tennessee & Alabama Railroad Company, organized July 15, 1889, under the General Laws of Tennessee, extending from Paducah, Kentucky, to Lexington, Tennessee, and the Tennessee Midland Railroad Company organized February 16, 1887, under the general laws of Tennessee, extending from Memphis to Perryville, Tennessee.

[fol. 66] (12) "Another line of railway reaching from Rome, Georgia, to Kingston, Georgia, known as the Rome Branch."

The Rome Branch, extending from Rome to Kingston, Georgia, was originally the Memphis Branch Railroad & Steamboat Company of Georgia, chartered under an Act of the General Assembly of Georgia, December 21, 1839, page 105. On January 16, 1856, Acts of Georgia, 1849-50, Page 243, the name of the corporation was changed to the Rome Railroad Company. This road was purchased by The Nashville, Chattanooga & St. Louis Railway as per deed dated December 31, 1896.

(13) "Another line of railway reaching from Bridgeport, Alabama, to Orme, Tennessee, known as the Orme Branch."

The Orme (Dorans Cove) Branch, was constructed by the Needmore Coal Company, a corporation, chartered under the laws of the State of Tennessee, May 18, 1900. On May 9, 1904, this line, which extends from a point on the Sequatchie Valley Branch near Bridgeport, Alabama, to Orme, Tennessee, was purchased by The Nashville, Chattanooga & St. Louis Railway from the Campbell Coal & Coke Company, a corporation, chartered September 13, 1900; [fol. 67] under the laws of Georgia, which had purchased it from the Needmore Coal Company.

[fol. 68]

EXHIBIT No. 2 TO PETITION

"The Nashville, Chattanooga & St. Louis Railway

Before the Railroad and Public Utilities Commission of the
State of Tennessee, Nashville

In re Assessment of the Property Returned by the NASHVILLE CHATTANOOGA AND ST. LOUIS RAILWAY for the Purpose of Taxation for the years 1938-1939

History

The Nashville Chattanooga and St. Louis Railway Company was chartered under Chapter I of the Acts of the General Assembly of the State of Tennessee 1845 and 1846, approved December 11, 1845. The organization of the company was perfected January 24, 1848 and by decree of the Chancery Court of Nashville, Tennessee, May 31, 1875 the name of the corporation was changed to 'The Nashville Chattanooga, and St. Louis Railway' which railway built, purchased or leased the different lines now being operated [fol. 69] by it. In making this assessment due consideration will be given to each of the several railroads organized under separate charters and now forming a part of The Nashville Chattanooga and St. Louis Railway.

	Main Line
Miles of road owned	748.63
Miles leased	366.72
Miles trackage rights	.16
Total	1,115.51

Distribution of Main Line Mileage, Owned or Leased by States

State	Number of Miles	Per cent
Tennessee	800.02	71.73
Alabama	113.30	10.15
Georgia	142.27	12.75
Kentucky	59.76	5.37
	1,115.35	100.00%

The mileage of main line owned and leased in Tennessee by divisions and the total mileage of main line of said divisions is as follows:

[fol. 70]	Mileage in Tennessee	Total Mileage of Division
Chattanooga Division	124.87	151.71
Northwestern Division	160.99	171.51
Western and Atlantic	15.45	136.85
Paducah & Memphis	180.63	229.87
Shelbyville Branch	8.44	8.44
McMinnville Branch	60.86	60.86
Columbia Branch	85.78	85.78
Huntsville Branch	2.58	80.48
Tracy City Branch	39.18	39.18
Sequatchie Valley Br.	54.78	57.68
Orme (Dorans Cove) Br.	2.03	10.42
Centreville Branch	60.78	60.78
West Nashville Br.	3.65	3.65
Rome Branch		18.14
	<hr/> 800.02	<hr/> 1,115.35

Side Track Mileage

State	Miles	Per cent
Tennessee	380.66	70.31
Alabama	45.30	8.37
Georgia	97.91	18.09
Kentucky	17.51	3.23
Total	<hr/> 541.38	<hr/> 100.00

[fol. 71]

Rolling Stock

The Corporation reports the Value of its rolling stock or \$7,618,129, which amounts to \$6,829.27 per mile of road operated. The Corporation reports that 69.27% of its rolling stock should be allocated to Tennessee.

The corporation operates 1,115.51 miles of main track of which .16 miles is trackage rights and 366.72 miles is leased, leaving only 748.63 miles owned by it and upon which its securities rest and in which its stock holders have an equity. 136.85 miles of track belongs to and is leased from

the State of Georgia. It is not bonded and stockholders have no equity in the property other than the value of the leasehold. 229.87 miles of track belongs to and is leased from the Louisville and Nashville Railroad Company. It is mortgaged by bonds issued by the Louisville and Nashville Railroad, first by a first mortgage bond of \$4,619,000 and then by a second mortgage of an indeterminate amount. Of the 800.02 miles of main track returned for taxation in Tennessee only 603.94 miles are owned by The Nashville Chattanooga and St. Louis Rwy.

[fol. 72]

Bonds

The bonded indebtedness resting upon the property returned by respondents for the purpose of taxation is:

Property owned	\$16,800,000
Equipment	840,000
Paducah & Memphis Div.	4,619,000
1/2 of L. & N. Terminals, Nashville	1,250,000
	<hr/>
	\$23,509,000

The Western and Atlantic Division (136.85) belongs to the State of Georgia and is not bonded. Respondent leases the Western and Atlantic Railway (136.85 miles) from the State of Georgia at an annual rental of \$540,000 and agrees to expend an average of \$60,000 per annum in improvements and betterments, all such improvements and betterments to become the property of the State of Georgia, which arrangement is equivalent to an annual rental of \$600,000. Based upon this rental charge the corporation has in the past valued this line at \$10,000,000.

The Nashville Chattanooga and St. Louis Railway also [fol. 73] guarantees by endorsement or by agreement with other railroads the following bonds of other companies.

L. & N. Terminal Co. (Nashville)	\$2,601,000
Memphis Union Station Co.	2,500,000
Paducah & Illinois R. R. Co.	2,587,000

Stock

The capital stock of the Nashville Chattanooga and St. Louis Railway is \$25,600,000. No dividends paid since 1931.

The company gives the value of its stock based upon quotations for January 10, 1937 as \$3,712,000.

The stockholders have no equity in the leased lines other than the value of the lease holds. In the stock value is reflected the value of certain non-taxable securities and holdings which will be given due consideration.

[fol. 74]

		Earnings			
	Year	Railway operating revenue	Net railway operating income	Other income	Net income
3 mo.	1938	\$3,322,810	\$199,058	\$55,201	D \$133,415
	1937	14,299,433	840,290	243,456	D 471,623
	1936	14,145,656	1,382,842	227,453	D 51,999
	1935	12,301,461	523,010	232,295	D 791,460
	1934	12,733,702	953,544	243,693	D 351,939
	1933	12,381,088	992,602	284,919	D 292,326

Non-Operating Property

The corporation owns property which it returns for taxation and which is not used in the service of transportation. Its value is not reflected in the net railway operating income of the Corporation. The corporation returns for taxation property which it does not own, the value of which is not included in its bonds or its stock certificates or is in any way reflected in its net Railway Operating Income, is not used in the service of transportation and a large portion of which is business property located in the city of Chattanooga,

[fol. 75] Securities and Choses in Action on Hand Jan. 10, 1938

Situs in Tennessee	\$2,585,286
Situs outside Tenn.	1,149,471

Included in those securities in Tennessee is an amount of \$1,058,724 representing U. S. Treasury Bonds.

Franchises

The corporation was asked to give the value of its franchise and the method by which said value was arrived at, which it failed or refused to do, claiming that there was no known rule or method by which its value could be determined.

Localized Property

The corporation reports the value of its localized property as follows:

Outside Tenn. Localized Property, Leased Rail, Etc.

Alabama	\$215,029
Georgia	2,360,522
Kentucky	101,670
	<hr/>
	\$2,677,221

[fol. 76] We find the value of such localized property in Tennessee as returned by the corporation to be \$3,297,250

Corporate Property

Final valuation as made by the Interstate Commerce Commission	\$69,262,132
Additions & betterments since valuation date, Jan. 30, 1916	11,840,601
Equipment	7,618,129
	<hr/>
	\$88,720,862

In valuing the property of the corporation for the purpose of taxation we will look to and consider the capital stock, corporate property, franchise and gross receipts, the market value of the shares of stock and bonded indebtedness and all evidence as are afforded by the returns, statements and schedules made by the respondent, together with such other evidence taken as to enable this Board to fairly and equitably fix the actual cash value of the property to be assessed, making due allowance for all non-taxable securities held.

[fol. 77] Conclusions

Value of entire property (1,115.35)	\$23,996,604.14
Less localized property	5,974,471.00
Value entire distributable property	18,022,133.14
Value per mile distributable property	16,158.276
Value distributable property in Tenn. (800.02)	12,926,944.00
Less legal exemption (\$1000)	12,925,944.00

This Board in distributing this value over the different railroads, lines, divisions and branches in Tennessee, now forming a part of the Nashville, Chattanooga and St. Louis Railway, will look to and consider the character and value of the different railroads, lines, divisions and branches, capi-

tal stock, corporate property franchise and gross receipts and the market value of the shares of stock and bonded indebtedness, as well as to the intangible value due to the organic relation of the different railroads, lines, divisions and branches to the systems as a whole. The company failed or refused to report the original cost or book value separately and in considering these items, we can only use our [fol. 78] judicial knowledge of conditions as we find them:

[fol. 78]		Distribution	
Division	Miles	Value per mile	Total
Chattanooga Division	124.87	\$37,200	\$4,645,164
Northwestern Division	160.99	21,800	3,509,582
Western & Atlantic	15.45	37,200	574,740
Paducah and Memphis	180.63	14,300	2,583,009
Shelbyville Branch	8.44	3,300	27,852
McMinnville Branch	60.86	5,300	322,558
Columbia Branch	85.78	5,300	454,631
Huntsville Branch	2.58	3,300	8,514
Tracy City Branch	39.18	6,300	246,834
Sequatchie Valley Br.	54.78	5,500	301,290
Orme (Dorans Cove) Br.	2.03	3,300	6,699
Centreville Br.	60.78	3,300	200,574
West Nashville Branch	3.65	12,190.14	44,494
Total	800.02		12,925,944

Aug. 22, 1938."

[fol. 78a] EXHIBIT No. 3 TO PETITION

Before the Railroad and Public Utilities Commission of Tennessee

Exceptions of the Nashville, Chattanooga & St. Louis Railway to the Assessment of its Properties for Ad Valorem Taxation in the State of Tennessee for the Biennial Period 1938-1939, as Made by the Railroad and Public Utilities Commission of the State of Tennessee, and Transmitted by Said Commission to Said Railway August 22, 1938.

Comes the Nashville, Chattanooga & St. Louis Railway and, respectfully protesting against the said biennial assessment of its properties served on it August 22, 1938, excepts thereto on the grounds and for the reasons hereinafter set forth.

I

System Valuation

[fol. 78b] 1. Exception is made to the finding and conclusion of the Commission that the value of the entire property

employed and used in Protestant's system of railroad, for purposes of taxation, and as a basis of the assessment of its properties in Tennessee, is \$23,996,604.14. Said finding and conclusion of the Commission, and said system valuation, are arbitrary and capricious in amount and are unsupported by any evidence stated or referred to in said assessment, or by any evidence submitted to or adduced by the Commission; and said amount is grossly in excess of the actual or taxable value of the property included in said valuation.

2. Exception is filed to said finding and conclusion of the Commission on the ground that the true value of all property used and employed in Protestant's railroad system, leased or owned, and including all property of every kind, real or personal, owned or in the possession of Protestant, except interest bearing securities exempted from ad valorem taxation in Tennessee, is not in excess of \$16,021,298; and exception is made to any valuation of said property as a basis for assessment in Tennessee in excess of said amount, on the ground that the evidence filed herewith and to be submitted to the Commission, together with the evidence before the Commission on which its assessment of August 22, 1938, [fol. 78c] was based, shows that any valuation for purposes of taxation of said system properties in excess of said amount is arbitrary and capricious and therefore in violation of Article I, section 8, and Article II, section 28, of the Constitution of Tennessee, and of the "due process of law" clause of the Fourteenth Amendment to the Constitution of the United States.

3. Exception is made to the failure of said Commission, in arriving at said finding and conclusion, to take into consideration and give effect to the reduced earning power of Protestant, the market value of its stocks and bonds, the reduction in its revenues, gross and net, the reduction in its working forces, the amount of property now and for a long time unused due both to depressed business conditions and to the many undue and illegal preferences by the constituted authorities to other and competing common carriers, including transportation by water, motor vehicle and airplane.

4. Exception is made to the failure of said Commission, in arriving at said finding and conclusion, to consider or give any effect to changed economic conditions and to the existing revolution in transportation. Protestant not only no

longer enjoys a partial monopoly in transportation but is in active competition with commercial motor vehicles, boats, [fol. 79] barges and airplanes, subsidized by government and subject to inadequate regulation; all of which has operated in constantly increasing degree to affect directly and injuriously the earning power and taxable value of Protestant's properties.

5. Exception is made to said finding and conclusion of the Commission on the ground that the Commission failed to take into consideration the particular situation and condition of Protestant's railway system with respect to its inability to earn a net corporate income under the unfavorable economic conditions now and for the past seven years existing and likely to exist during the immediate future, including (a) the fact that the N. C. & St. L. system is a combination of three separately owned lines of railroad, the value of each being greatly dependent upon the continuance of the combined operation by Protestant as a single system; (b) the effect on the value of the system properties of the constantly increasing burden of Federal, State, County and Municipal taxation; (c) the highly competitive nature of an excessive proportion of the traffic moving over the system, dependent upon and controlled by the efficiency of Protestant's operating and traffic soliciting officers and employees rather than any natural advantage of location, condition or value of Protestant's roadway and equipment; (d) the excessive ratio of operating costs to gross revenues resulting from the necessity of expeditions handling of said [fol. 80] competitive traffic, in order to obtain it, and from the excessive grades and curves of the roadway; (e) the large mileage percentage of unproductive and unprofitable branch lines on the system, the traffic on which has been and is being depleted by the public's patronage of carriers by motor vehicle, enabled to operate at tariff rates lower than this Railway can meet by governmental construction and maintenance of public roads and highways, amounting to a direct subsidy of such motor vehicle carriers; (f) the constantly increasing ratio of employe wages to gross revenues, to avoid which the Protestant and other railroad systems have been rendered powerless by the legislative and administrative agencies of the Federal government, and particularly the excessive ratio of employe wages to gross operating revenues obtaining on this system above the aver-

age for the railways of the Nation; (g) the excessive cost of handling freight tonnage on this system, nearly fifty per cent greater than the average for the Class I railroads of the Nation; and (h) the obvious necessity that operating expenses for some years to come be increased to levels in excess of those now maintained, in order that the properties devoted to public transportation needs may be properly and efficiently operated in the public interest, completely absorbing any increase in net revenues reasonably to be anticipated.

[fol. 81] 6. Exception is made to the action of the Commission in referring to the properties of the Western & Atlantic Railroad, operated by Protestant under a fifty-year lease from the State of Georgia, as having a value of ten million dollars, or any sum approximating that amount, based upon Protestant's obligation to pay an annual rental therefor of \$540,000 and to expend an average of \$60,000 annually for additions and betterments. Said sum of \$60,000 is no more than would be required for the proper operation of the property over so long a period, without the specific obligation, and the rental includes taxes to the State of Georgia of approximately \$150,000, on the basis of the tax burden imposed upon the remainder of the system, so that approximately \$400,000 is the real measure of the annual rental payable under the terms of the lease. In addition, the lease was executed more than twenty years ago (before the competitive inroads of motor and air transportation had been begun or were contemplated) to prevent the dismemberment of a railroad system which, under the then existing economic and transportation conditions, was earning an annual net corporate income of \$2,839,316.78, as contracted with the 1937 system deficit of \$471,632.02. The terms of the lease contract executed in 1917 constitutes no fair or reasonable measure of the present value of the leased properties, located for the most part in the State of Georgia, [fol. 82] as a basis for the assessment of Protestant's property in Tennessee. For such purpose the W. & A. can only be valued as a part and element of the N. C. & St. L. Railway system, and the excessive obligations of the lease contract constitute a liability reducing and not augmenting the value of Protestant's Tennessee properties. Apportioning the average net railway operating income of the entire system for the seven year average, 1931-1937, to the W. & A. on

a main track mileage basis, that property failed by \$490,000 to produce the annual obligation of the lease. In other words, 67% of the net railway operating income of the entire system, for the seven year period, was required to meet the contract obligation to the State of Georgia on only 12% of the system mileage. In the determination of system value, as a basis for apportionment to Tennessee, the excess of the rental obligation for the use of the W. & A. over present earning power should be found to more than off-set any difference between leasehold and reversionary value. The value of the W. & A. is material to this inquiry only as a part of the N. C. & St. L. System, and not as a separate and independent property.

7. Exception is made to the addition of \$4,619,000 of bonds, issued by the Louisville and Nashville Railroad Company of the 229.87 miles of track constituting the Paducah & Memphis Divisions of Protestant's system, to the aggregate of \$18,890,000 of bonds of the N. C. & St. L. Railway, as a basis for testing or measuring system value.

While said L. & N. bonds constitute a first mortgage on the P. & M. division they are general obligations of the Louisville and Nashville Railroad Company. Their sale in 1896 as well as their present market value was and is immeasurably influenced by the fact of the road's operation as an important and integral part of Protestant's system, and by the fact that the bonds are general obligations of the Louisville and Nashville Railroad Company.

The present taxable value of the Paducah & Memphis division is as a part and parcel of the N. C. & St. L. Railway system, and no proper measure or test of its present value except as a part of said system is possible except in the realm of conjecture and guesswork. Constituting only 20% of the system mileage, the rental paid for its use by the N. C. & St. L. Railway for the seven year period, 1931-1937 inclusive, under the terms of the lease executed in 1896, amounted to 23% of the total net railway operating income of the entire system for the period. Assigning system net railway operating income to the P. & M. division on the basis of main track mileage, the average for the seven year period is \$176,992, less than the annual rental, contracted in 1896 and based upon its cost to the L. & N.

[fol. 84] The combined annual rental obligation of the two leased divisions, 33% of the main track mileage of the

system, amounts to 90.5% of the average annual net railway operating income of the system for said seven year period. To assign value for tax purposes to these leased properties as separate entities, based on the long-term rental obligations, contracted in an economic era no longer existent, or on the bond issue referred to, would necessarily result in a disproportionate and unfair diminution of the income producing value of the remainder of the system of which they are a part. The leased properties and the mileage owned by Protestant constitute a single system of railroad, operated as such since 1896, the taxable value of which can only be measured with any approximation of accuracy by its earnings.

The sum of \$16,021,298, arrived at by the capitalization of the income produced by all the taxable property owned or leased by Protestant, includes the actual and taxable value of all such property without regard to the nature of Protestant's interest or ownership.

8. Exception is made to the reference in said assessment of August 22, 1938, to the bonds issued by Memphis Union Station Company, the properties of which are otherwise assessed to that Company; by the Paducah and Illinois [fol. 85] Railroad Company, none of the property of which is located in Tennessee, nor is a part of Protestant's system; and by the L. & N. Terminal Company (except one-half thereof), Protestant's obligation with respect to these several bonds is a liability and not an asset.

9. Exception is made to the statement of the Commission in said assessment that "due consideration" would be given to the value of non-taxable securities and holdings of Protestant, without in any way indicating the amount and value of such securities included in the reference, and without in any way indicating what consideration was in fact given thereto.

10. Exception is made to the table, and its use made by the Commission, on page 3 of said assessment under the title "Earnings", in that the third column of said table headed "other income" is largely made up of gross income from tax exempt securities, not assessable by the Commission, and gross rental income from non-operating property, without deduction for sums exacted by government in the form of taxes on the property producing such income. The true statement of income from railway opera-

tion and from all taxable property is submitted to the Commission in Exhibit No. 4 to the affidavit of L. E. McKeand, filed herewith.

[fol. 86] Exception is also made to the use by the Commission in said table of income figures for a period of only five years, when in its assessments of 1934 and 1936 the Commission cited and made use of the similar financial records of the seven year period immediately preceding the assessment year.

11. Exception is made to the inclusion in said assessment of securities and choses in action owned by Protestant in the sum of \$3,734,757. All said securities, together with an additional \$245,423 of corporate stocks, listed on pages 16-17 of the tax return filed by Protestant, are expressly exempted from assessment for ad valorem taxation by the statutes of Tennessee codified in Williams Code of Tennessee, sections 1123.1 to 1123.34 inclusive, with the possible exception of \$1,496,000 cash and certificates of deposit constituting working Capital.

12. Exception is made to the reference by the Commission in said assessment to the valuation placed on the property included in Protestant's railroad system for rate making purposes by the Interstate Commerce Commission. Such valuation was the aggregate of findings of the reproduction cost of inventoried items of property, to which was added or deducted arbitrary sums for reasons not [fol. 87] assigned or explained by the Interstate Commerce Commission; said aggregate constituting a sum on which Protestant was entitled to earn a net railway operating income of 5¾ per cent. Value for purposes of taxation is measured by actual earnings and not by a sum the investor would be entitled to earn without profit disproportionate to the amount invested. Exhibit No. 38 to the affidavit of Fitzgerald Hall, filed herewith, demonstrates how far short actual earnings have been of the permissive level established by said valuation.

The present value of equipment in the sum of \$7,618,129 is a continuation to date of an equipment valuation of \$8,700,509 included in the valuation aggregate of June 30, 1916, so that instead of adding the present equipment value to the original figure, as done in the said assessment, proper consideration of present equipment value would reduce the original figure by \$1,082,380.

Reference is made to pp. 14-16 of the affidavit of L. E. McKeand, filed herewith, for further corrections of the statement in said assessment with respect to the valuation of this property by the Interstate Commerce Commission, as reported in 31 I. C. C. Valuation Reports, 567.

13. Exception is made to the valuation placed by this Commission in said assessment on the properties of Protestant [fol. 88] ant, for the reason that said assessment purports to state the basis of such valuation and wholly fails to refer to or state any facts which either sustain the valuation made or inform Protestant of the basis or grounds for such valuation. The statement made in said assessment that the Commission "will look to and consider the capital stock, corporate property, franchise and gross receipts, the market value of the shares of stock and bonded indebtedness," etc., without stating or indicating in any way the nature or extent of the consideration given to said items, constitutes, as Protestant believes and respectfully avers and charges, arbitrary and capricious action, depriving Protestant of any opportunity to point out, in support of its exceptions to the result reached, the errors which produced such result, and thereby denies to Protestant the protection accorded to it by the provisions of Article 1; section 8, and Article II, section 28, of the Constitution of Tennessee, and by the "due process of law" clause of the Fourteenth Amendment to the Constitution of the United States.

And for the reasons stated in the preceding paragraph Protestant particularly excepts to the statement in said assessment that the valuation placed on its property was in part based on "such other evidence taken as to enable this Board to fairly and equitably fix the actual cash value of [fol. 89] the property to be assessed," without stating the nature, extent, source and purport of such additional evidence and the consideration given by the Commission thereto.

14. Exception is made to the assessment of August 22, 1938, on the ground that having found the value of Protestant's localized property in Tennessee to be less than in the assessment of 1936, the Commission so adjusted the value of system distributable property that the identical sum was assigned as the value of 800.02 miles of main track in Tennessee for 1937-1938 which had been fixed by the Commission in 1936 as the value of 838.98 miles of

main track in Tennessee, making no deduction whatever for the abandonment of 36.96 miles of main track mileage after the date of assessment of 1936, but increasing the per mile valuation of the system mileage by \$650.35, to absorb the assessed value of the abandoned mileage.

15. Exception is made to the inclusion of 3.65 miles of track known and referred to as the "West Nashville" branch in the total of main track mileage of Protestant's system, either as a basis or element of system value or for the purpose of allocating system value to the State of Tennessee for purposes of ad valorem taxation. Said mileage is no different from other side tracks on the system and [fol. 90] is improperly classified as main track mileage. It serves no station or agency, produces no road-haul revenue, and is operated and maintained jointly with the Louisville and Nashville Railroad Company, as a part of the yard tracks of the Nashville freight terminals. No trains are operated over it and its use is entirely for switching purposes. Since the closing of the West Nashville agency station in 1932, this track has possessed no characteristic or quality of main track mileage, and its inclusion in the protestant's tax return since said date as a main track has been by oversight and inadvertence. The Commission is respectfully requested to permit the correction of the return filed by it, and to eliminate said mileage from the aggregate for the system and State in the assessment for the current biennium.

16. Exception is made to the action of the Commission in assessing the equipment (rolling stock) reported in Protestant's tax return at the full book value thereof, based upon the reproduction or cost price, less depreciation computed only on the estimated service life of the equipment units making up the total. The evidence filed herewith, and particularly Exhibit 47 to the affidavit of Fitzgerald Hall, shows the greater part of such equipment to be old [fol. 91] and far behind the modern developments in railroad equipment. Much of it is unserviceable and without value save as scrap, and many units are so far behind the requirements of interchange movement that they must be discarded and scrapped within a few months or years. The remaining value of such equipment can only be measured by the service to which it may be put on Protestant's railroad system; and such value is adversely affected by

the many economic and operating disadvantages to which the system is subject, referred to in the preceding paragraphs of these exceptions and fully sustained by the evidence filed herewith. No evidence has been furnished to the Commission that such equipment has cash or sales value approximating said book value, and Protestant avers that the book value should be reduced by at least twenty-five per cent to fairly measure the actual value of the system equipment for purposes of ad valorem taxation.

II

Allocation of System Value to Tennessee

1: Exception is made to the action of the Commission in its said assessment of August 22, 1938, in assigning or allocating the value of Protestant's system distributable [fol. 92] property to Tennessee, for the purpose of taxation by the State and its subdivisions, on the basis of the ratio of main track mileage in Tennessee to the total main track mileage of the system, on the ground that property values are thus brought into Tennessee for taxation which have no taxable situs in the State, and an assessment of distributable property in Tennessee is made which (1) is grossly in excess of the value of such property for taxation and (2) grossly exceeds the proper, fair and reasonable ratio of the value of the distributable property in Tennessee to the value of the distributable property of the system. The use of said main track mileage ratio as the basis of allocating system value to Tennessee is therefore, unreasonable, arbitrary and illegal, and violates the rights and immunities guaranteed to Protestant by Article I, Section 8, and Article II, section 28, of the Constitution of Tennessee, and by the "due process of law" clause of the Fourteenth Amendment to the Constitution of the United States.

The ratio of main track mileage in Tennessee (800.02) to system mileage (1,115.35) as found by the Commission in said assessment, is 71.73%. Exclusion of the West Nashville Branch (3.65 miles) in accord with the exception hereinabove made in section I, paragraph 15, would make this [fol. 93] ratio 71.63%, a reduction of only one-tenth of one per cent.

Pages 12 and 13 of the tax return filed by Protestant state the present value of the equipment (rolling stock) based upon cost less depreciation, and set out a table of the

mileage traveled by all equipment in 1937 by states, the Tennessee ratio of the aggregate of all such mileage being 69.27%. This is the maximum ratio for allocating equipment value to Tennessee for taxation.

The physical properties of Protestant's system, other than equipment, were inventoried at cost of reproduction in the valuation proceedings of the Interstate Commerce Commission, as of June 30, 1916, and allocated to the several states through or in which the system is operated. This allocation, brought to December 31, 1937, by items of additions, betterments, and retirements, is set out on Exhibit No. 5 to the affidavit of L. E. McKeand, filed herewith, with the result that the ratio of the investment cost of all distributable property, other than rolling stock, located in Tennessee, to the value of such property for the system is 64.11 per cent, and Protestant avers that this ratio is the only fair and just measure supported by evidence for such allocation.

This Commission has always recognized the obvious variation in value per mile of the several divisions constituting [fol 94] the N. C. & St. L. system, its findings ranging in 1934 from \$2,000 per mile for the Perryville branch (since abandoned) to \$37,000 per mile for the Chattanooga and Atlanta divisions; and in the assessment of August 22, 1938, from \$3,300 per mile for the Shelbyville, Huntsville, Centerville and Orme branches to \$37,200 per mile for the Chattanooga and Atlanta divisions. It is, however, recognized that it is proper to assign a uniform per mile value to a single branch or division. All of the divisions and branches of the system lie partly or wholly in Tennessee except the Rome branch of 18.14 miles in Georgia. Ascribing to the Rome branch the value (\$11,225 per mile) placed upon it by the Georgia taxing authority, and to the out-of-Tennessee mileage of each division and branch the per mile value fixed by this Commission on the Tennessee mileage of the division or branch, the result is an aggregate valuation of the out-of-Tennessee mileage of nearly two million dollars (\$1,858,614) in excess of the value of such mileage as fixed by this Commission on the basis of a uniform value for all main track mileage.

Seventy-four and one-half per cent of the branch mileage of Protestant's system lies in Tennessee. In 1937 the branch mileage, constituting 38% of the system total, handled only 4.4% of the system gross ton miles, and 1.2% of

[fol. 95] the system passenger miles. The tonnage density per mile of branch line track is only 7.4% of that of the main line tracks. The disproportionate branch mileage in Tennessee contributes largely to the fact that the per mile average for Tennessee main track mileage of car-miles, gross ton miles and passenger miles is only 88 per cent of the similar average for main track mileage outside Tennessee, and the net railway operating income for Tennessee is only 51% of the system figure. On a track-mile basis, the net railway operating income per mile of main track in Tennessee in 1937 was only 41.84 per cent of the per mile income of main track outside Tennessee. Both by the test of use and of net operating income the road in Tennessee has a smaller value per mile of main track than that outside Tennessee.

III

Equalization with Assessment on Other Property

1. Exception is made to the assessment made of Protestant's properties in Tennessee because made at 100% of the Commission's findings and conclusions as to the actual value of such properties. Said assessment is made for the purpose of certification to the several counties and municipalities in which Protestant's property is located for application thereto of the local tax rate, averaging \$2.22 per \$100.00, and the state tax rate of .08 per \$100.00. The property of citizens and property owners generally is assessed locally in the several counties and municipalities at not more than two-thirds of its actual value, and in many counties at less than one-half its actual value. This fact is known to this Commission as a matter within the historical, general and common knowledge of the people of Tennessee, and is established and verified by evidence filed herewith. Said underassessment or ratio-assessment is uniformly, customarily, deliberately and intentionally practiced; is now and has been for at least forty years the common policy of the state, county and municipal officers vested with the administration of the tax laws of the State and its subdivisions. The failure of this Commission to reduce the assessment made by it of Protestant's properties in Tennessee to at least two-thirds of the value found for and ascribed to them constitutes an unreasonable and illegal

discrimination against Protestant and a violation of Article I, section 8, and Article II, section 28, of the Constitution of Tennessee, and of the "due process of law" and [fol. 97] "equality" clauses of the Fourteenth Amendment to the Constitution of the United States.

IV

In support of the foregoing exceptions Protestant files herewith affidavits of its officers, Fitzgerald Hall, Charles Barham, L. E. McKeand, C. M. Darden, and W. H. Swiggart, all of whom stand ready to be cross-examined at the pleasure of the Commission. In addition affidavits are filed of numerous citizens of Tennessee, available for cross-examination if desired by the Commission. The affidavit of Dr. J. H. Parmelee, Economist of the Association of American Railroads, verifies certain tables and charts pertaining to the present status of the railroads of the United States, and any such additional or explanatory facts desired by the Commission will be promptly obtained on reasonable notice.

The Nashville, Chattanooga & St. Louis Railway,
(Signed) by Wm. H. Swiggart, Counsel.

August 31, 1938.

[fol. 98]

EXHIBIT NO. 4 TO PETITION

BEFORE THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF
TENNESSEE

In re Assessment of the Property of The Nashville, Chattanooga & St. Louis Railway for the Purpose of Taxation for the Years 1938-1939

The Nashville, Chattanooga & St. Louis Railway, having duly filed its exceptions to the tentative valuation and assessment of its properties made by the Railroad and Public Utilities Commission on August 22, 1938, said exceptions having been supported by written evidence filed on August 31, 1938, and at the hearing on September 14, 1938; now respectfully excepts to the action of the Commission in denying said exceptions by its order of October 5, 1938, and prays an appeal to the State Board of Equalization that

said exceptions may be there further considered and said valuation and assessment reduced and equalized as set out in said exceptions; and further prays that all of the evidence considered by the Commission, including that filed by the Railway, the record of the hearing of said exceptions on September 14, 1938, the exceptions filed by the [fol. 99] Railway, and the several orders and findings of this Commission, be certified by the Secretary of the Commission and transmitted to the State Board of Equalization in the manner prescribed by law for its proper review and action thereon.

This October 7, 1938.

The Nashville, Chattanooga & St. Louis Railway,
(Signed) by Wm. H. Swiggart, General Counsel.

The foregoing prayer for appeal is granted, and the Secretary of this Commission is directed to certify the record to the State Board of Equalization as prayed.

This October 7, 1938.

(Signed) Porter Dunlap, Chairman; W. H. Turner, Commissioner; Leon J. Joulmon, Jr., Commissioner.

[fol. 100]

[File endorsement omitted].

IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

SUPERSEDEAS BOND—Filed Dec. 9, 1938

Know all men by these presents that we, The Nashville, Chattanooga & St. Louis Railway, a Tennessee corporation, with its principal office at Nashville, Davidson County, Tennessee, as principal, and The Aetna Casualty and Surety Company, as surety, are held and firmly bound unto the State of Tennessee, and the counties and municipalities thereof, through which said principal, The Nashville, Chattanooga & St. Louis Railway, operates its lines of railroad, in the sum of Thirty Thousand Dollars, for which payment, well and truly to be made, said principal and surety, do bind themselves, their successors and assigns, firmly by these presents.

Signed and sealed this 9th day of December, 1938.

[fol. 101] The condition of this obligation is such that

Whereas, The Nashville, Chattanooga & St. Louis Railway has this day filed a petition (1) for a writ of certiorari to bring before and into the Circuit Court of Davidson County, all records relating to the assessment of its properties for the biennial period 1938-1939 to the end that said assessment shall be declared illegal, null and void, and (2) for a writ of supersedeas to inhibit the State Board of Equalization of railroad properties composed of the Governor, Secretary of State, the Treasurer, the Commissioner of Finance and Taxation and the Commissioner of Administration, from certifying as provided by law the assessment made by the Railroad and Public Utilities Commission of Tennessee and approved by the State Board of Equalization to the extent that it exceeds the sum of Ten Million Dollars (\$10,000,000).

Now, therefore, if the said The Nashville, Chattanooga & St. Louis Railway, principal, and the Aetna Casualty and Surety Company, surety, shall pay or cause to be paid to said State of Tennessee, and said counties and municipalities, such sums as the Court may decide to be lawfully due from the said The Nashville, Chattanooga & St. Louis Railway for the years 1938 and 1939 and abide the further orders of the Court in this proceeding, then this obligation shall be void, otherwise to remain in full force and effect.

[fol. 102] The Nashville, Chattanooga & St. Louis Railway, By Wm. H. Swiggart, General Counsel, Principal. The Aetna Casualty & Surety Company, By T. Graham Hall, Resident V-President, Surety. Attest: E. C. Drumwright, Res. Asst. Sec'y, surety. (Seal.)

[fol. 103] IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

WRIT OF CERTIORARI

To Gordon Browning, Grover Keaton, A. B. Broadbent, Wallace Edwards, and Walter Stokes, Jr., members of and constituting the Board of Equalization for the assessment of railroad property in the State of Tennessee:

In the matter of the assessment of the properties of The Nashville, Chattanooga & St. Louis Railway, within the State of Tennessee, wherein you have approved the assessment by the Railroad and Public Utilities Commission of the State of Tennessee for the years 1938 and 1939 in the sum of \$16,223,196.00, you are hereby directed to send all the schedules filed with the Railroad and Public Utilities Commission, State Tax Assessors of railroad properties, and all papers, letters, depositions, affidavits, maps and other evidence of every kind filed with said Railroad and Public Utilities Commission and also all the minutes, proceedings and other records or certified copies thereof of said [fol. 104] Railroad and Public Utilities Commission pertaining to the assessment of the properties of The Nashville, Chattanooga & St. Louis Railway for the years 1938 and 1939 now in the possession of said Board of Equalization or said Railroad and Public Utilities Commission of Tennessee, enclosed and certified under your hand and seal to the Second Circuit Court of Davidson County to be held at the Court House in Nashville on the 1st Monday of January, 1939, to the end that such other and further proceedings may be had relative to the assessment of the properties of The Nashville, Chattanooga & St. Louis Railway in Tennessee as to the Court may seem right and proper under the laws of Tennessee and of the United States. And you are further directed to make no certification of said assessment as provided by law in excess of the sum of Ten Million (\$10,000,000.), which amount of Ten Million Dollars may be certified and distributed as set out in section XIV of the original petition in this cause, until the further orders of this Court. And have you then and there this writ showing how you have obeyed the same.

This writ issued pursuant to a fiat of the Honorable A. B. Neil, Judge of the Second Circuit Court of Davidson County.

Witness, Hugh Freeman, Clerk of said Court this 1st [fol. 105] Monday of October, 1938.

Hugh Freeman, Clerk, By T. J. Wilkinson, D. C.

Issued 9th day of December, 1938.

Hugh Freeman, Clerk, By T. J. Wilkinson, D. C.

Service accepted, Gordon Browning, Governor.

Came to hand same day issued, and executed by reading the within summons to Defendant, Gordon Browning,

Grover Keaton, A. B. Broadbent, Wallace Edwards, and
Walter Stokes, Jr. This 10th day of Dec. 1938,
Ivey Young, Sheriff, By F. A. Carter, D. S.

[fol. 106] IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

PROCESS AND SHERIFF'S RETURN

To the Sheriff of Davidson County:

Whereas, in the matter of the assessment of the properties of The Nashville, Chattanooga & St. Louis Railway for taxation for the biennial period 1938-1939, Gordon Browning, Grover Keaton, A. B. Broadbent, Wallace Edwards and Walter Stokes, Jr., members of and constituting the State Board of Equalization for the assessment of railroad property in the State of Tennessee, approved the assessment of said Railway's properties as made by the Railroad and Public Utilities Commission of Tennessee and overruled each and every exception thereto filed in and relied upon before said Board of Equalization, said action being taken by said Board of Equalization on December 9th, 1938;

[fol. 107] And, whereas, The Nashville, Chattanooga & St. Louis Railway has filed a petition for certiorari and supersedeas in the Second Circuit Court of Davidson County, to remove the record in the matter of the assessment of its properties to said Circuit Court to the end that such further proceedings may be had relative to said assessment as may be right and proper under the laws of Tennessee and of the United States;

And, whereas, pursuant to the fiat of the Honorable A. B. Neil, Judge of the Second Circuit Court of Davidson County, dated December 9th, 1938, writs of certiorari and supersedeas were issued in manner and form required by law returnable to the next term of the Circuit Court of Davidson County which convenes on the 1st Monday in January, 1939.

Now, therefore, you are hereby commanded to make these facts known to the said Gordon Browning, Grover Keaton, A. B. Broadbent, Wallace Edwards and Walter Stokes, Jr.

Witness my hand and seal this 1st Monday in October, 1938.

Hugh Freeman, Clerk. By T. J. Wilkinson, D. C.

Issued 9th day of December, 1938.

Hugh Freeman, Clerk. By T. J. Wilkinson, D. C.

[fol. 108] Came to hand same day issued and executed by reading the within process to defendants Gordon Browning, Grover Keaton, A. B. Broadbent, Wallace Edwards, Walter Stokes, Jr., and leaving copy of bill with them.

This 10th day of December 1938.

Ivey Young, Sheriff, By F. A. Carter, D. S.

Walker & Hooker, W. A. Miller, W. H. Swiggart, Atty.

[fol. 109] [File endorsement omitted]

IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

ORDER AS TO PAYMENT OF TAXES FOR YEAR 1938—Filed Dec. 31, 1938

The attorneys of record for the petitioner, the Attorney General of Tennessee as attorney for the defendants, and the City Attorney of the City of Nashville consenting thereto, it is ordered and adjudged by the court that the petitioner may make payment to the City of Nashville of its taxes for the year 1938 in the sum of \$19,114.24 without prejudice to any of the rights or interests of any of the parties in this cause and without prejudice to any process heretofore issued herein. The said payment shall be credited as a payment against any amount herein finally determined to be done by the petitioner for the year 1938, or which may otherwise legally be assessed against it as taxes payable to the City of Nashville for said year. The City of Nashville, by its Comptroller and Treasurer, shall execute a receipt to the petitioner for said payment in accord with this order.

[fol. 110] This order is made as of and shall be treated as entered upon the minutes of the court on December 31, 1938.

A. B. Neil, Judge.

Approved for entry:

Roy H. Beeler, Attorney General of Tennessee, for the Defendants; W. C. Cherry, Attorney of the City of Nashville; Wm. H. Swiggart, Attorney for the N. C. & St. L. Railway.

[fol. 111] IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

ORDER AMENDING PETITION—Jan. 27, 1939

Came the petitioner, The Nashville, Chattanooga & St. Louis Railway, by its attorneys of record, on this 27th day of January, 1939, and moved the Court for leave to amend its original petition filed in this court and cause by adding to section VII thereof, immediately preceding the last paragraph of said section, the following additional paragraph:

"Petitioner avers that in assessing its property in Tennessee it was the duty of the Railroad and Public Utilities Commission to separately value petitioner's distributable property in Tennessee, as such property is defined in section 1528 of the Code of Tennessee, and after ascertaining the value of such distributable property within the State of Tennessee, and deducting therefrom the sum of \$1,000.00, to divide the remainder by the number of miles of the entire length of the road within the State. Neither the Railroad and Public Utilities Commission nor the Board of Equalization followed or conformed to the mandate of the statute [fol. 112] by ascertaining the value of petitioner's distributable property in Tennessee, but followed and pursued an illegal, unreasonable and arbitrary method of fixing a sum which the Commission certified, and the Board of Equalization approved, as the assessment of such property for taxation. The Commission announced its conclusion that the value of petitioner's distributable property in the four states was \$18,022,133.14, and dividing this sum by the number of miles of road, it arrived at a value per mile of the distributable property throughout the system. The Com-

mission multiplied this per mile value by the number of miles of road in Tennessee and certified the result as the value of the petitioner's distributable property in Tennessee. This plan and method of assessment was unwarranted by the statutes and laws of Tennessee, and was arbitrary and unreasonable, in that the Commission made no finding, and did not undertake to find that the value per mile of the petitioner's distributable property is the same throughout the system, or that the value per mile of petitioner's distributable property in Tennessee is the same or equal to the value per mile of petitioner's distributable property without the State of Tennessee. Neither the Railroad and Public Utilities Commission nor the Board of Equalization found or undertook to find that the value per mile of petitioner's distributable property in Tennessee is or was the [fol. 113] same as or equal to the value of the distributable property per mile of that part of petitioner's system lying and located outside the State of Tennessee. The evidence before the Commission shows without controversy that the value per mile of petitioner's distributable property in Tennessee is substantially less than the value per mile outside Tennessee, as more particularly shown in section VIII of this petition; and the assessment, reported by the Commission, Exhibit 2 to this petition, affirmatively repudiates any conception or finding by the Commission of uniformity in the per mile value of the distributable property of petitioner's railroad system. The assessment of petitioner's distributable property in Tennessee is therefore arbitrary and void, and unless restrained in this proceeding, will deprive petitioner of its rights guaranteed to it by Article I, section 8, and Article II, section 28, of the Constitution of Tennessee, and by the "due process of law" and "equal protection of law" clauses of the Fourteenth Amendment to the Constitution of the United States.

"Petitioner avers and the record certified to this Court by the Railroad and Public Utilities Commission and the Board of Equalization, including the record of the hearing before the Commission and the Commission's response to petitioner's exceptions, affirmatively shows that, notwithstanding [fol. 114] the evidence filed with the Commission by the petitioner contained the basis and facts for a real and accurate valuation of petitioner's property in Tennessee, and elsewhere, the Commission gave no consideration thereto and made no effort to arrive at the value of peti-

tioner's property subject to taxation in Tennessee from the evidence submitted, but fixed the reported assessment of petitioner's railroad system property solely and entirely by assuming the correctness of the valuation made by the Commission in 1936, making minor reductions in the assessment of some items of localized property and increasing the 1936 valuation of the system distributable property by the exact sum which would avoid any reduction in the Tennessee assessment because of the abandonment of 36.96 miles of roadway in Tennessee included in the 1936 assessment. Petitioner therefore avers that the assessment made by the Railroad and Public Utilities Commission and approved by the Board of Equalization was arbitrarily and illegally made and that petitioner was denied the consideration of the evidence submitted by it which the statutes and constitutional provisions hereinabove cited and invoked entitled it to receive, wherefore the said assessment is void and of no effect and should be so adjudged herein."

And the petitioner further moved to amend its said original petition by striking out the word "equality" in the last sentence of section X of said petition and inserting in lieu [fol. 115] thereof the words "equal protection of the law."

And said motion having been heard and understood by the court is sustained, and it is ordered that the petition be and the same is amended in accordance therewith and this order be spread on the minutes.

A. B. Neil, Judge.

Approved for entry:

Wm. H. Swiggart, Attorney for Petitioner. Wm. F. Barry, Jr., Attorney for Defendants.

[fol. 116] IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

ORDER SUBSTITUTING PARTIES DEFENDANT—JANUARY 27, 1939

It appearing to the court that the defendant, Gordon Browning, has been succeeded in office, as Governor, by Prentice Cooper; that the defendant, Grover Keaton, has been succeeded in office, as State Treasurer, by John W. Harton; that the defendant Wallace Edwards has been succeeded in office, as Commissioner of Administration, by

Hugh Clarke; and that the defendant Walter Stokes, Jr., has been succeeded in office, as Commissioner of Finance and Taxation, by Estes Kefauver, and that by virtue of such successions in office such original defendants are no longer members of the State Board of Equalization of the State of Tennessee, but that their successors in office now constitute such members; and it further appearing that the attorneys for the petitioner and the Attorney General of the State of Tennessee for the State Board of Equalization consent to a substitution of such successors in office, in lieu of the original [fol. 117] defendants, who were sued in their official capacities.

It is ordered, and adjudged that Prentice Cooper, John Harton, Hugh Clarke and Estes Kefauver, be substituted as parties defendant in lieu and in place of Gordon Browning, Grover Keaton, Wallace Edwards and Walter Stokes, Jr.

It is further ordered and adjudged by consent that no additional service of process need issue.

A. B. Neil, Judge.

Approved for entry: Roy H. Beeler, Attorney General of Tennessee for the Defendants; Wm. H. Swiggart, Attorney for The Nashville Chattanooga, & St. Louis Railway.

[fol. 118]

[File endorsement omitted]

[Title omitted]

IN CIRCUIT COURT OF DAVIDSON COUNTY.

MOTION BY DEFENDANTS TO DISMISS THE PETITION FOR CERTIORARI AND DISCHARGE THE SUPERSEDEAS HERETOFORE GRANTED—Filed February 4, 1939

May it Please the Court:

Come the defendants Gordon Browning, A. B. Broadbent, Grover Keaton, Wallace Edwards, and Walter Stokes, Jr., in their official capacity as members of the State Board of Equalization of Tennessee, and move the Court to dismiss the petition for certiorari and discharge the supersedeas [fol. 119] heretofore granted in this cause, upon the following grounds, to wit:

I

Plaintiff's petition seeks to review the assessment of the Nashville, Chattanooga, & St. Louis Railway's property in the State of Tennessee, which has heretofore been lawfully assessed by the Railroad & Public Utilities Commission of Tennessee, as required by statute; and which assessment was appealed to and duly heard, considered, and acted upon by the State Board of Equalization, all as shown in the petition, and upon the entire record certified to this Court.

There being no showing upon the record certified to this Court that either the Railroad & Public Utilities Commission or the State Board of Equalization exceeded their jurisdiction, acted illegally, or acted fraudulently, the action of said State Board of Equalization is final and conclusive and not subject to review by the courts.

II

The petition fails to allege and the certified record fails to show any discrimination, inequality, or lack of uniformity, [fol. 120] in the assessment of petitioner's railroad property by the Railroad & Public Utilities Commission, and the assessment of any other similar species of property, as said Railroad & Public Utilities Commission is required by law to assess, to-wit: other railroad companies, telephones, telegraphs, sleeping cars, freight cars, street cars, power companies, pipe lines, electric light companies, *ect.*

III

The petition fails to allege and the certified record fails to show any discrimination as between the assessment of petitioner's railroad property and other railroad properties or public utilities amounting to an intentional violation of the essential principle of practical uniformity.

IV

The certification of the record as brought to this Court conclusively shows that all of the evidence introduced, heard or considered by the Railroad & Public Utilities Commission and the State Board of Equalization is contained in the record and upon the entire record the real question presented is a question of opinion as to valuation which is not [fol. 121] subject to review by the Courts, there being an absence of any showing that the Railroad & Public Utilities

Commission and the State Board of Equalization exceeded their jurisdiction, acted illegally, or acted fraudulently.

V

The certified record before this Court is wholly insufficient to show any intentional, arbitrary and systematic undervaluation by State officials of other taxable property in the same class as petitioner's, but on the contrary, shows that all assessments for ad valorem taxation are reviewed by one and the same State Board of Equalization, and said Board is assumed to have acted lawfully and in good faith in an absence of any showing to the contrary.

VI

The valuation of petitioner's property as fixed by the Interstate Commerce Commission, and as shown in the record certified to this Court, vastly exceeds the assessment made upon petitioner's property by the Railroad & Public Utilities Commission and fixed by the State Board of Equalization.

VII

The certified record fails to sufficiently show any discrimination as between the assessment of petitioner's railroad property and any and all other property in the State of Tennessee assessed for ad valorem taxation, which would amount to an intentional violation of the essential principle of practical uniformity and which would constitute something more than the usual and honest diversity of opinion as to actual cash value as entertained by the numerous tax assessors in the various counties of the State.

For the foregoing reasons, defendants move the Court to dismiss the petition for certiorari and discharge the superedeas heretofore granted in this cause.

T. Pope Shepherd, J. W. Anderson, Abe Waldauer,
W. C. Cherry, Horace Osment, Dudley Porter, Jr.,
W. F. Barry, Jr., Attorneys for Defendants.

[fol. 123] IN CIRCUIT COURT OF DAVIDSON COUNTY

[File endorsement omitted]

AMENDMENT TO DEFENDANTS' MOTION TO DISMISS CERTIORARI
AND DISCHARGE SUPERSEDEAS—Filed February 4, 1939

Come the defendants, Gordon Browning, A. B. Broadbent, Wallace Edwards, and Walter Stokes, Jr., and move the Court to be allowed to file additional grounds to dismiss the petition to certiorari, and discharge the supersedeas heretofore granted in this cause, upon the following grounds, to-wit:

VIII

This Court has no jurisdiction to hear or grant said petition, the same being cognizable in a court of equity alone.

IX

The assessment complained of by the railroad made by the Public Utilities Commission and confirmed by the Board of Equalization was, as shown by the transcript, computed [fol. 124] according to the statute, not beyond their jurisdiction nor did they act illegally or fraudulently and this action is final and conclusive and is not subject to review by this Court, a court of law—particularly by writs of certiorari and supersedeas.

X

The petitioning railroad has not filed statements and information required by Section 1509 and Section 1511 of the Code of Tennessee of 1932, particularly statements of the value of its franchise, and therefore cannot be permitted by this Court in opposition to the valuation fixed upon its property by the Railroad and Public Utilities Commission, as provided in Section 1521 of the Code of 1932.

XI

Since the bringing of this suit and since the filing of defendants' original motion, the Legislature of Tennessee has enacted Chapter 7 of the Public Acts of 1939 (a certified copy of same being made an exhibit to this motion), which requires in substance that before a railroad or other utility [fol. 125] can maintain a tax suit of this nature it is re-

quired to pay the taxes due and owing the State of Tennessee, the counties and municipalities, upon the full value of their assessment. Until such payment is made, petitioners have no standing in court and their petition should be dismissed.

W. F. Barry, Jr.

[fol. 126] IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

ORDER OF CONTINUANCE—February 1, 1939

The motion filed in the above styled cause by the respondents, and which is authenticated by the Court's signature and made a part of the record, is ordered continued until the next term of the Court, and the cause is continued for further consideration by the Court.

A. B. Neil, Judge.

[fol. 127] IN CIRCUIT COURT OF DAVIDSON COUNTY

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

VS.

GORDON BROWNING, GROVER KEATON, A. B. BROADBENT, WALLACE EDWARDS, and Walter Stokes, Jr., members of and constituting the State Board of Equalization of the State of Tennessee

JUDGMENT—April 18, 1939

Be It Remembered, that this cause was heard on this and former days of the court, upon the petition as amended of The Nashville, Chattanooga & St. Louis Railway, and exhibits thereto, and upon the original motion of defendants, and amended motion, to dismiss the petition for certiorari and discharge the supersedeas heretofore granted in the cause.

And after argument of counsel in support of and against said motions, the Court considered the cause upon its merits; and in passing upon said motions the Court considered the allegations in the petition and the facts shown by the record certified by the State Board of Equalization,

whereupon the Court sustained Grounds 3, 4 and 5 in the original motion, and sustained the amended motion except-[fol. 128] ing Ground 8 therein, and overruled all other grounds in the original motion and Ground 8 of the amended motion; all of which more fully appears from written memorandum signed by the Court and filed in this cause, which is made a part of the record herein.

To the foregoing action of the Court in sustaining Grounds 3, 4 and 5 in the original motion of the defendants, and in sustaining the amended motion excepting Ground 8 thereof, the petitioner, The Nashville, Chattanooga & St. Louis Railway excepted; and to the action of the Court in failing to sustain each and every one of the grounds in both the original and amended motions, the defendants excepted.

It is therefore ordered, adjudged and decreed by the Court that the original petition for certiorari and supersedeas as amended be and the same is hereby dismissed, that the writs of certiorari and supersedeas heretofore granted be and the same are hereby discharged, and that Prentice Cooper, Estes Kefauver, A. B. Broadbent, Hugh Clarke, and John W. Harton, substituted as defendants in lieu of the original defendants and constituting the State Board of Equalization of the State of Tennessee, have and recover of the petitioner, The Nashville, Chattanooga & St. Louis Railway and its surety on the prosecution bond, The Aetna Casualty & Surety Co. of Hartford, Conn., all costs of this cause, for which execution may issue.

A. B. Neil, Judge.

[fol. 129]

[File endorsement omitted]

IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

MOTION FOR NEW TRIAL ON BEHALF OF DEFENDANTS STATE
BOARD OF EQUALIZATION—Filed April 18, 1939

On this day the defendants (State Board of Equalization), through their attorneys, move the Court to set aside the judgment heretofore rendered in this cause and to grant them a new trial upon the following grounds:

I

That the Court erred in failing to sustain Ground No. 1 of defendants' original motion to dismiss the petition for certiorari and discharge the supersedeas, said ground being as follows:

[fol. 130] "Plaintiff's petition seeks to review the assessment of the Nashville, Chattanooga & St. Louis Railway's property in the State of Tennessee, which has heretofore been lawfully assessed by the Railroad & Public Utilities Commission of Tennessee as required by statute and which assessment was appealed to and duly heard, considered and acted upon by the State Board of Equalization, all as shown in the petition, and upon the entire record certified to this Court.

"There being no showing upon the record certified to this Court that either the Railroad & Public Utilities Commission or the State Board of Equalization exceeded their jurisdiction, acted illegally or acted fraudulently, the action of said State Board of Equalization is final and conclusive and not subject to review by the courts."

II

That the Court erred in failing to sustain Ground No. II of defendants' original motion to dismiss the petition for certiorari and discharge the supersedeas, said ground being as follows:

"The petition fails to allege and the certified record fails to show any discrimination, inequality or lack of uniformity [fol. 131] in the assessment of petitioner's railroad property by the Railroad & Public Utilities Commission, and the assessment of any other similar species of property, as said Railroad & Public Utilities Commission is required by law to assess, to-wit: other railroad companies, telephones, telegraphs, sleeping cars, freight cars, street cars, power companies, pipe lines, electric light companies, etc."

III

That the Court erred in failing to sustain Ground No. VI of defendants' original motion to dismiss the petition for certiorari and discharge the supersedeas, said ground being in the following language:

"The valuation of petitioner's property as fixed by the Interstate Commerce Commission and as shown in the record certified to this Court, vastly exceeds the assessment made upon petitioner's property by the Railroad & Public Utilities Commission and fixed by the State Board of Equalization.

IV

That the Court erred in failing to sustain Ground No. VII of defendants' original motion to dismiss, the petition [fol. 132] for certiorari and discharge the supersedeas. Said ground appears in the following language:

"The certified record ~~fails to sufficiently~~ show any discrimination as between the assessment of petitioner's railroad property and any and all other property in the State of Tennessee assessed for ad valorem taxation, which would amount to an intentional violation of the essential principle of practical uniformity and which would constitute something more than the usual and honest diversity of opinion as to actual cash value as entertained by the numerous tax assessors in the various counties of the State."

Wherefore, the defendants pray that said judgment be set aside and a new trial be ordered.

Prentice Cooper, et al. Wm. Barry, Jr., Dudley
Porter, Jr., Attorneys for Defendants.

[fol. 133] [File endorsement omitted]

IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

NOTICE OF MOTION FOR NEW TRIAL—Filed April 19, 1939

Petitioner, The Nashville, Chattanooga & St. Louis Railway, will move the Court for a new trial, as shown by grounds appearing in a written motion this day filed with the Clerk.

Edwin Hunt, Seth M. Walker, Wm. W. Swiggart,
For Motion.

To W. F. Barry, Jr., Assistant Attorney General, et al.

[fol. 134]

[File endorsement omitted]

IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

PETITIONER'S MOTION FOR NEW TRIAL—Filed April 19, 1939

Petitioner, The Nashville, Chattanooga & St. Louis Railway, respectfully moves that it be granted a new trial, and to that end that the final judgment heretofore entered dismissing its petition herein be set aside and vacated, upon all and each of the following grounds:

1

The Court erred in failing to hold and adjudge that the assessment under review is null and void because based upon and including interest-bearing securities and corporate [fol. 135] rate stocks of the value of \$2,484,000, not subject to ad valorem taxation by the laws of Tennessee, as averred in section VI of the original petition. The failure of the Court to so rule subjected petitioner to an unjust and unreasonable discrimination in violation of the due process of law and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States, and in violation of Article 1, section 8 and Article 2, section 28, of the Constitution of Tennessee.

See:

Petitioner's exceptions to original assessment, section 1, paragraph II.

Original assessment of Railroad and Public Utilities Commission, Exhibit 2 to petition.

Response of Railroad and Public Utilities Commission to exceptions filed by petitioner.

Original tax return, pp. 16-17.

2

The Court erred in failing to hold and adjudge that the assessment under review is null and void because it is averred in section VII of the petition, as amended, and is [fol. 136] shown by the assessment record certified to the Court, that said assessment is based upon a finding of value of petitioner's railroad system property in the sum of \$23,996,604.14, which is in substantial excess of any reasonable

opinion or estimate of value supported by or deducible from any evidence upon which such assessment was made, and which finding of value is not supported by or based upon any evidence in the record upon which the assessment was made, all of the evidence showing that the actual value of all said property is not in excess of \$16,021,298 and because the assessment so made of petitioner's property in Tennessee is unreasonably, arbitrarily and therefore illegally excessive and confiscatory, in violation of the laws of Tennessee and of the provisions of the Federal and State Constitutions cited in paragraph 1 of this motion, and constituting an illegal interference with and obstruction to interstate commerce, in violation of Article 1, section 8, of the Constitution of the United States.

Affidavits of L. E. McKeand, Charles Barham, C. M. Darden, Fitzgerald Hall, J. H. Parmalee, Original tax return.

3

The Court erred in failing to hold and adjudge the assessment under review null and void, as violative of petitioner's constitutional and statutory rights cited in section VII of its petition herein, as amended, because it is averred in the petition, and shown by the certified record of the assessment, that the assessment and valuation of petitioner's property was made upon an assumption of the correctness of assessments and valuations of prior years, and without consideration of the evidence of present value duly submitted to the Railroad and Public Utilities Commission and the State Board of Equalization and certified to this Court.

See response of Railroad and Public Utilities Commission to petitioner's exceptions, and opinion filed by State Board of Equalization.

4

The Court erred in failing to hold and adjudge that the Railroad and Public Utilities Commission acted illegally in contravention of the requirements and provisions of the statutes of Tennessee, the due process of law clause of the Fourteenth Amendment to the Constitution of the United States, and of Article 1, section 8, and Article 2, section 28, of the Constitution of Tennessee, in finding and assessing

the value of petitioner's distributable property in Tennessee to be the average value per mile of the system distributable property multiplied by the number of miles of [fol. 138] main track in Tennessee, thus assigning to Tennessee for taxation therein 71.73 per cent of the value of the system distributable property, while in the same assessment the said Commission found no uniformity of per mile value among the several branches and divisions of petitioner's railroad system, assigning values thereto ranging from \$3,300 per mile to \$37,200 per mile, and found that 62.3 per cent of the Tennessee mileage (498 miles out of 800) is of less per mile value than the average found for the system; the Commission's specific finding of per mile value by divisions demonstrating that the Commission found that not more than 65 per cent of the system distributable property value is in Tennessee instead of the 71.73 per cent assessed to the State, a difference in assessment of \$1,212,558.

See assessment, Exhibit 2 to petition.

5

The Court erred in failing to find and adjudge that the use by the Railroad and Public Utilities Commission and the State Board of Equalization of the ratio of main track mileage in Tennessee to main track mileage of the system, as the sole basis or measure of the value of petitioner's distributable property assessable in Tennessee, is shown by the evidence to have been an arbitrary and unreasonable and therefore illegal means or method of assessment, having the effect of importing into Tennessee for taxation property values existing only in other states and beyond [fol. 139] the jurisdiction or power of this State to tax; in that said ratio does not "fairly reflect the relation between value of the system as a whole and value of the part within a state." (Great Northern Ry. vs. Weeks, 297, U. S. 135.) By said illegal method of assessment petitioner is deprived of substantial rights guaranteed to it by Article 1, section 8, and Article 2, section 28, of the Constitution of Tennessee, and by the due process of law clause of the Fourteenth Amendment of the Constitution of the United States.

The evidence, particularly the answer of petitioner to the Railroad Commission's questionnaire, pages 17-21, and the

affidavit of L. E. McKeand, pages 8-11 (Exhibit 3), 13-14 (Exhibit 5), 19-20 (Exhibit 8), demonstrates clearly that the per mile value of petitioner's system outside Tennessee is substantially greater than that within the state. Of special significance is the showing (Exhibit 8 to the affidavit of L. E. McKeand) that the Tennessee mileage produced in 1937 a net railway operating income which was, per mile of main track, less than half (41.84%) of the similar income per mile of the mileage outside Tennessee; that the Interstate Commerce Commission, by inventory has found the value measured by cost of the fixed property in Tennessee to be only 64.11 per cent of the system property, instead of the 71.73 per cent assessed (McKeand, Exhibit 5); and [fol. 140] that the net railway operating income produced by the railway in Tennessee for 1937 was only 51.5 per cent of the like income produced by the entire system.

6

The Court erred in failing to hold and adjudge that the inclusion of the so-called "West Nashville Branch," as main track mileage of 3/65 miles, in computing the value of petitioner's distributable property in Tennessee, was arbitrary and unreasonable, and therefore illegal, because all the evidence shows that said branch consists entirely of side tracks and industrial tracks which are a part of the Nashville Terminals, and possesses none of the attributes of main tracks.

See:

Exceptions filed to tentative assessment, section 1, paragraph 15.

Exhibit No. 3 to petition.

Affidavit, Fitzgerald Hall, pp. 43-45.

7

The Court erred in failing to find and adjudge that the assessment under review is null and void, as in violation of Article 1, section 8, and Article 2, section 28, of the Constitution of Tennessee, the due process of law clause and equal protection of the law clause of the Fourteenth Amendment to the Constitution of the United States, in that the assessment of petitioner's property is made at its actual value as found by the Railroad and Public Utilities Commission, upon which assessment and value it is to be subjected to state, county and municipal tax rates appli-

cable alike to all property within the taxing jurisdiction, while the property of all taxpayers assessed by county and municipal assessors is assessed for 1938 taxes at an average percentage or ratio of only two-thirds of its actual value as found by such local assessors, the assessments in no county or municipality wherein petitioner's property is subject to taxation exceeding 75 per cent of such actual value; such ratio assessment or under-assessment or other property being shown by the uncontroverted evidence to have been voluntarily intentionally, wilfully and systematically made by the local tax assessors, pursuant to long-established practice and custom of which the Supreme Court of Tennessee has taken judicial notice and which is fully proven in the record of the assessment proceedings.

See:

Exceptions to assessment, Exhibit 3 to petition, section III, paragraph 1.

[fol. 142] Volume of 124 affidavits, containing affidavits of county tax assessors, members of county boards of equalization, and citizens, showing ratio of assessed values to actual values of property throughout the State.

Opinion of Board of Equalization.

Petitioner's exception above cited was ignored by the Railroad and Public Utilities Commission. The State Board of Equalization, in its opinion filed with the record, found that the assessment was "in line with all other *like* property within the state," thereby resorting to a theory of classification of property for ad valorem taxation contrary to the express language and direction of Article 2, section 28, of the Constitution of Tennessee. The opinion of the State Board of Equalization shows by its recitation that no proper consideration was given to the sworn statements of tax assessors that they had systematically and intentionally assessed the property of taxpayers generally at from fifty to seventy-five per cent of its actual value. This evidence, uncontradicted on the record, is a part of the common knowledge of every taxpayer in the state, is made a part of current history by the public records quoted in the first affidavit in the volume cited, and is judicially recognized by the Supreme Court. The refusal of the State Board of Equalization to equalize petitioner's assessment [fol. 143] is shown by the reasons assigned by the Board to

have been a denial of due process of law and the equal protection of law, against which petitioner is entitled to relief in this case and by this Court.

8

The Court erred in sustaining the third ground of defendant's motion to dismiss the petition herein, which is as follows:

"The petition fails to allege and the certified record fails to show any discrimination as between the assessment of petitioner's railroad property and other railroad properties or public utilities amounting to an intentional violation of the essential principle of practical uniformity."

This ground of the motion charges that the petition and the certified record failed to show any discrimination between the assessment of petitioner's property and the assessment of the property of other railroads and public utilities, etc. The motion implies and is grounded upon a theory that the property of railroads and public utilities [fol. 144] may be constitutionally assessed for ad valorem taxation at a higher rate than the rate at which other property is assessed, and that the principle of uniformity is satisfied in Tennessee if the property of railroad companies and public utilities is assessed on the basis of actual value while other property is assessed on the basis of a percentage of value less than actual value. Article 2, section 28, of the Constitution requires that all property shall be taxed according to its value "so that taxes shall be equal and uniform throughout the state" and that "no one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value." It is a violation of this constitutional provision to assess the property of railroad corporations and public utilities upon a different and higher ratio of ascertained value than is employed in the assessment of other property, and it is immaterial that the petition fails to allege discrimination against petitioner in favor of other corporations whose property is assessed by the Railroad and Public Utilities Commission.

9

The Court erred in sustaining the Fourth ground of defendants' motion to dismiss the petition herein, which is as follows:

[fol. 145] "The certification of the record as brought to this Court conclusively shows that all of the evidence introduced, heard or considered by the Railroad & Public Utilities Commission and the State Board of Equalization is contained in the record and upon the entire record the real question presented is a question of opinion as to valuation which is not subject to review by the courts, there being an absence of any showing that the Railroad & Public Utilities Commission and the State Board of Equalization exceeded their jurisdiction, acted illegally, or acted fraudulently."

This ground of the motion to dismiss charges that, in seeking to avoid the assessment of petitioner's property on the ground that the value placed upon it is substantially in excess of its actual value, petitioner seeks to have the Court substitute its opinion as to value for that of the assessing Commission and Board. This is not a correct statement of the averments and prayer of the petition.

The petition shows that the means or method employed to assess petitioner's property in Tennessee for ad valorem taxation was first to place a value upon the entire railroad [fol. 146] system, located in the four States of Tennessee, Alabama, Georgia and Kentucky, a portion of which system value was assigned or allocated to Tennessee, by a method elsewhere criticized and attacked as arbitrary and illegal in the petition and in this motion for a new trial. Under this method, obviously, the finding of the value of petitioner's property in Tennessee is directly affected by the value of the entire system as found by the Commission. The petition charges, in section VII thereof, that the Railroad and Public Utilities Commission fixed the value of the system property at an arbitrary amount "which is not supported nor sustained by any evidence submitted to or properly considered by said Commission." The petition then avers that the true value of the system property, arrived at by the capitalization of earnings, is only about half the value found by the Commission, and charged that the Commission had repudiated earning power as a measure of value and had arrived at an arbitrary value by means and methods which it had not disclosed and which are not deducible from the assessment made and published. The petition charged that the Commission's finding of value was supported by no evidence submitted to or properly considered by the Commission and was therefore arbitrary and unreasonable, and therefore

illegal, depriving petitioner of its constitutional rights invoked in the petition. By these averments the judgment of [fol. 147] the Court was invoked, not to find value or fix the amount of the assessment, but to find and adjudge that the valuation made by the Commission was so far in excess of any value shown by the evidence as to be an arbitrary and therefore illegal finding. The evidence sustains the averments of the petition, and this ground of the motion to dismiss should have been overruled.

10

The Court erred in sustaining the fifth ground of defendants' amended motion to dismiss the petition herein, which is as follows:

"The certified record before this Court is wholly insufficient to show any intention, arbitrary and systematic undervaluation by State officials of other taxable property in the same class as petitioner's, but on the contrary, shows that all assessments for ad valorem taxation are reviewed by one and the same State Board of Equalization, and said Board is assumed to have acted lawfully and in good faith in an absence of any showing to the contrary."

This ground of the motion should have been overruled [fol. 148] because it fails to controvert the averments of the petition and the undisputed evidence that the assessment of petitioner's property in Tennessee was made according to the Commission's finding of its actual value while the property of other taxpayers, assessed by local state and county assessors, was assessed for the same taxation at values less than the actual value found by the assessors, such underassessment of other property having been the result of wilful, voluntary, systematic and long-continued custom and practice on the part of such local assessors.

11

The Court erred in sustaining the ninth ground of defendants' amended motion to dismiss the petition herein, which is as follows:

"The assessment complained of by the railroad made by the Public Utilities Commission and confirmed by the Board of Equalization was, as shown by the transcript, computed

according to the statute, not beyond their jurisdiction, nor did they act illegally or fraudulently, and this action is final and conclusive and is not subject to review by this Court, a court of law,—particularly by writs of certiorari and super-sedeas.”

[fol. 149] This ground of the motion is predicated upon the assumption that the petition and certified record failed to show that the assessment under review was the result of arbitrary and illegal action on the part of the assessing Commission and Board. This ground of the motion should have been overruled because, as particularly pointed out in the first nine grounds of this motion, the said assessment was the result of many and particular arbitrary and illegal actions and rulings on the part of said Commission and Board.

12

The Court erred in sustaining the tenth ground of defendants amended motion to dismiss the petition herein, which is as follows:

“The petitioning railroad has not filed statements and information required by Section 1509 and Section 1511 of the Code of Tennessee of 1932, particularly statements of the value of its franchise, and therefore cannot be permitted by this court in opposition to the valuation fixed upon its property by the Railroad and Public Utilities Commission, as provided in Section 1521 of the Code of 1932.”

[fol. 150] There is no basis nor support on the record for this ground of the motion to dismiss. Section 1521 of the Code prescribes a penalty upon a railroad or public utility for refusing or failing to file schedules and statements called for by the Commission. Such schedules and statements were filed by petitioner in this proceeding, and no complaint was ever made that they were not a full compliance with the order of the Commission, until the motion to dismiss was filed in this Court. The motion is based upon petitioner's answer to Question 9, on page 17, of the tax return, included in the certified record in this Court, wherein petitioner showed some confusion as to what was called for, referring to the statutes as failing to give a formula for determining the value of franchise. In the original assessment made by the Railroad and Public Utilities Commission, reference to this question and answer was made, the Commis-

sion stating that petitioner had failed or refused to give the value of its franchise "Claiming that there was no known rule or method by which its value could be determined." The Supreme Court of Tennessee has defined franchise value thus:

"The franchise is the right to use the bed and superstructure, its value depends solely upon their use and the benefit [fol. 151] derived therefrom."

Railroad v. Bate, 80 Tenn. 573, 581.

The tax return reported the facts as to operation and earnings, insofar as called for, and no material facts were withheld.

In support of its exceptions to the original assessment, petitioner filed elaborate proof, showing the financial result of the railway operations for twenty years preceding the date of the assessment, including all facts which petitioner conceived were either directly or indirectly material in determining the value of its franchise. This ground of the motion to dismiss is unfair to petitioner and is wholly without support on the record.

13

The Court erred in sustaining the eleventh ground of defendants' amended motion to dismiss the petition herein, which is as follows:

"Since the bringing of this suit and since the filing of defendants' original motion, the Legislature of Tennessee has enacted Chapter 7 of the Public Acts of 1939 (a certified copy of same being made an exhibit to this motion), which [fol. 152] requires in substance that before a railroad or other utility can maintain a tax suit of this nature it is required to pay the taxes due and owing the State of Tennessee, the counties and municipalities, upon the full value of their assessment. Until such payment is made, petitioners have no standing in court and their petition should be dismissed."

The statute invoked by this ground of the motion to dismiss, Chapter 7, of the Public Acts of the General Assembly of Tennessee of 1939, was enacted January 26, 1939, after the institution of the suit, and after the original motion to dismiss had been filed. The statute has no application to the present suit because, not purporting to have re-

troactive effect, it is presumed to have been enacted in contemplation of Section 12 of the Code of Tennessee which provided that "The repeal of a statute does not affect any right which accrued * * * nor any proceeding commenced, under or by virtue of the statute repealed." It has no application to the present suit because it purports to apply only to assessments, "fixed and certified by the Board of Equalization," and the assessment hereunder [fol. 153] had not been certified at the time the petition was filed, and its subsequent certification has been prevented by order of this Court. The statute can have no application to this proceeding because to give it the application contended for would impair and defect petitioner's constitutional right to review the assessment by the common law writ of certiorari, guaranteed by Article 6, section 10, of the Constitution of Tennessee. The statute can have no application to this proceeding for the further reason that it is unconstitutional and void as in violation of Article 2, section 17, of the Constitution of Tennessee, in that the subject is not expressed in its caption, and the subject is not germane to the subject of the code section of which it purports to be an amendment.

The Statute can have no application to this proceeding for the further reason that it is unconstitutional and void as in violation of Article 1, section 8, and Article 11, section 28 of the Constitution of Tennessee, and of the Fourteenth Amendment to the Constitution of the United States, in that the said statute makes an arbitrary, capricious and unreasonable classification between railroads and public utilities, of which the petitioner is one, and all other taxpayers.

[fol. 154] For each and all of the foregoing grounds and reasons petitioner moves that it be granted a new trial, to the end that proper judgment sustaining its original petition and granting the relief prayed therein may be duly made and entered by the Court.

Edwin Hunt, Seth M. Walker, Wm. H. Swiggart,
Attorneys for the Petitioner.

[fol. 155] IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

ORDER OF CONTINUANCE—April 24, 1939

This case having been heard and determined on a former day of this term, and each of the parties having heretofore

in its and their own behalf filed motions for a new trial within the time allowed by law and by rule of this Court, it is ordered and adjudged that this case be continued to the next succeeding term of this Court for consideration, hearing and determination of both said motions for a new trial, and for all other and further orders, judgments and proceedings which may to the Court appear proper. The hearing of said motions is set for Monday, May 15, 1939.

A. B. Neil, Judge.

Approved for entry:

Wm. H. Swiggart, Atty. for Petitioner; W. M. Barry,
Atty. for Defendants.

[fol. 156] IN CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

ORDER OVERRULING MOTIONS FOR NEW TRIAL, ETC.—June 15,
1939

This case came on to be heard upon the motions for a new trial heretofore filed by each of the parties, which motions are marked filed by the Clerk and properly identified by the official signature of the trial judge.

Upon consideration thereof, both said motions for a new trial are overruled by the Court for the reasons stated and assigned in the written opinion of the Court which is ordered to be filed and made a part of the record in this case.

Thereupon, both the petitioner and the defendants excepted to the action of the Court in overruling their respective motions for a new trial, and prayed an appeal in the nature of a writ of error from the judgment of the Court to the present term of the Supreme Court of Tennessee at Nashville, and the appeals of both parties were by the Court granted.

[fol. 157] Petitioner is allowed thirty days from the date of this order within which to file its appeal bond and within which to file its bill of exceptions; defendants are allowed thirty days from the date of this order within which to file their bill of exceptions, but no appeal bond will be required, it appearing to the Court that defendants are officials of the State of Tennessee sued in their official capacity and the State is required to post no bond.

The writ of supersedeas is abated and discharged. The petitioners are allowed thirty days in which to perfect an appeal. The supersedeas will remain in effect during this time to enable the petitioner to make proper application to the Supreme Court for a modification of this Court's order with reference to the writ of supersedeas.

In the preparation of the bill of exceptions that part of the record certified to this Court by the State Board of Equalization which consists of unattached papers shall be copied, but the remainder of such record shall be made a part of the bill of exceptions by reference and the originals thereof sent to the Supreme Court as a part of the record on the appeal in error.

A. B. Neil, Judge.

O. K. for entry:

Wm. Barry, Dudley Porter, Jr., for Defts. W. H. Swiggart, for Petitioner.

[fol. 158]

[File endorsement omitted]

IN SECOND CIRCUIT COURT OF DAVIDSON COUNTY

[Title omitted]

Bill of Exceptions—Filed June 24, 1939

This case was heard by the Honorable A. B. Neil, Judge of the Second Circuit Court of Davidson County, Tennessee, on the motion filed by defendants to dismiss the original petition and to discharge the supersedeas theretofore issued by the Court on December 9, 1938.

The motion to dismiss was filed on January 6, 1939. The record of the assessment under review was certified to the Circuit Court and filed in said Court on January 24, 1939. At the hearing on said motion, an order was first entered substituting present members of the State Board of Equalization as parties defendant; and thereupon petitioner was by the Court permitted to amend its petition, and defendants permitted to amend their motion to dismiss, all as appearing on the record of the Court.

At said hearing the defendants, by their attorneys, contended that the Court should look to the record certified by the State Board of Equalization, in aid of the motion to dis-

miss, while petitioner, by its attorneys, contended that said motion must be tested by the petition itself without looking to the record of the assessment as certified by the State Board of Equalization.

After holding the case under advisement, the Court entered final judgment, on April 18, 1939, sustaining certain grounds of defendants' motion to dismiss, dismissing the original petition and discharging the writ of supersedeas. The Circuit Court filed its written opinion, pursuant to which said judgment was entered, as follows:

OPINION

"The effect of the writ of certiorari was to bring up the entire record for review by the Circuit Court.

"We can consider only the facts shown in the certified [fol. 160] record to determine if the Public Utilities Commission acted illegally, fraudulently, or exceeded its authority in assessing the petitioner's property. There is no point in asking that the motion by defendant be overruled and the case heard on its merits. In passing upon the motion the Court considers the allegations in the petition and the facts shown in the record. The merits are fully considered in passing on the motion. Should the Court overrule the motion and require the defendant to answer, all that could be stated in an answer would be 'Here is the record. We are compelled to, and do, rely upon the record, which is evidence of the fact that there was a legal assessment.'

"Upon full consideration of the petition, the record in the case and the motion, oral argument of counsel and briefs filed by the counsel, I am constrained to sustain the defendants' motion.

"The Court sustains paragraph Nos. 3, 4 and 5 in the original motion of the defendant State Board of Equalization. Overrules other grounds of the motion.

"The Court sustains the amended motion, except ground No. 8, to the effect that the Circuit Court is without jurisdiction, etc., which is overruled.

A. B. Neil, Judge."

[fol. 161] Petitioner filed its motion for a new trial, on April 19, 1939, in accord with the rules of the Circuit Court. Said motion is as follows:

(This motion for a new trial is set out in full as a part of the technical record hereinabove at pages 134-154.)

Defendants likewise filed their motion for a new trial, on April 18th, 1939, in accord with the rules of the Circuit Court, and said motion is as follows:

"On this day the defendants (State Board of Equalization), through their attorneys, move the Court to set aside the judgment heretofore rendered in this cause and to grant them a new trial upon the following grounds:

(Motion for new trial is copied at Pages 129-132.)

[fol. 162] On April 23, 1939, during the February term, 1939, of the Court, an order was entered continuing the case to the next term of the Circuit Court for the disposition of both said motions for a new trial, and for such further proceedings deemed proper by the Court, and fixing May 15, 1939, as the date for the hearing on said motions.

Both motions for a new trial were presented to the Court by oral argument of counsel and by brief, on May 15, 1939; and on June 14, 1939, an order was entered overruling both motions, pursuant to a written opinion filed by the Court, which is as follows:

OPINION ON MOTIONS FOR NEW TRIAL

"There is no question in my mind but that the Circuit Court has the power to review the action of the Board of Equalization and the Public Utilities Commission in determining the value of petitioner's property for the assessment of ad valorem taxes. The common law writ of certiorari was issued to bring up the record to review the action of these respective Boards and determine the legality of the assessment. This Court has no authority to fix a valuation of petitioner's properties.

[fol. 163] "Upon the hearing the counsel for petitioners (defendants) moved the Court to dismiss the petition upon several grounds. First, there was no showing upon the record certified to this Court that either the Railroad and Public Utilities Commission or State Board of Equalization 'exceeded their jurisdiction, acted illegally, or acted fraudulently,' and that the action of said State Board is final and conclusive and not subject to review by the Courts. I will discuss the motion generally.

"It is my judgment that the action of the State Board is subject to review, but the only power which the Court has

is, as above stated, to determine whether or not the Board 'exceeded their jurisdiction, acted illegally, or acted fraudulently.'

"In determining this question it was clearly within the province of the Court to consider the entire record in passing on the defendants' motion.

Edde vs. Cowan 33 Tenn., 293-294, 6 Heisk. 601, 11 Corpus Juris. p. 189, Sec. 329.

"There is nothing in the record to show that the Board [fol. 164] acted illegally, or fraudulently or exceeded its jurisdiction unless such conclusion can be found in what is alleged to be over-valuation as compared with the value of other property by the various political subdivisions of the State, or the method of determining the value of petitioner's property, or the valuation so fixed was so grossly excessive as compared to other property as to indicate a fraudulent design. The constitution provides that all property shall be assessed at its cash value, and, of course, the Assessors of the various political subdivisions of the State, as well as the Railroad Commission and State Board of Equalization must comply with this provision. There is no authority granted to classify property. The law provides the way and manner in which the value of railroad property shall be determined. It is the duty of the Board to comply, or near as possible, with the Statute. Value is a thing not easy to determine. Men will differ when applying the methods prescribed by Statute to determine value, as to what the cash value of any property may be. There are many who insist that property yielding no income is without any real value. [fol. 165] We know there are vast properties and business enterprises that are conducted every year at a loss. Mr. Rober Babson recently stated that 'out of a list of 1200 stocks listed on the N. Y. Stock Exchange less than one fourth paid any dividend.' We know there are thousands of acres of idle land in Tennessee, as well as other properties, that are being carried by owners at a dead loss. While this is true yet all must admit that these properties have value. The various stocks mentioned by Mr. Babson have value, and doubtless much greater value than the quotation, would indicate. The fact that a dividend is not paid does not indicate even little value. This Court, in passing upon the official acts of the defendant Boards, must presume that the said Boards complied with the law, not only as to methods of determining value but that the result

reached by them was lawful. I think it is a basic rule of law that illegality of conduct is never presumed. Surely fraud is never presumed in any Court except where the parties occupy a fiduciary relationship.

"It is my judgment, based on the record, that the Public Utilities Commission substantially complied with the law in [fol. 166] methods of determining value. I think I have the right to assume that the Board pursued the same method in determining the valuation of other railroads and public utilities in Tennessee. It is unthinkable that a different, and I might say an illegal, method would be adopted as to each of the properties assessed by the Commission. It is contended by petitioner that the assessment is fraudulent, or, to state it in fairer terms, the over-valuation as compared with other properties in the state produces fraudulent results, and is therefore in violation of petitioner's constitutional rights.

"If the Court is to consider the value of the petitioner's property as compared with the assessed value of other property (and I look to the entire record as to that) I must compare the present assessment with former assessments in determining if the defendant Boards acted arbitrarily and capriciously, or otherwise.

"The record shows a reduction in assessment of approximately (\$10,000,000.00) ten million dollars within recent years.

"When I heard a similar case several years ago, in which petitioner sought a review of the action of the Public Utilities Commission in assessing its property, the record showed an increase of approximately double what it had been. I held that such an increase could not be justified and that the record sent up for review fully supported petitioner's contention. While I think (this is my personal conviction) that in recent years all railroads have suffered, due to unfair competition, six or eight years of economic stagnation, the demoralization resulting from government control, yet the courts cannot correct all the wrongs and injustices complained of, nor act as a supervisor of governmental agencies, except to keep them within the limitation of their authority as prescribed by law. All property has decreased in value in recent years, and there has been a decrease in assessment for taxes, including the property of the petitioner.

"With the Assessors of the various political subdivisions of the State acting independently of each other and all act-

ing independently of the State Boards of Assessors (Public Utilities Commission) and the State Board of Equalization, I am at a loss to see how there can ever be a proper assessment, that is from a technical legal standpoint.

"I can clearly see how that County Assessors in certain [fol. 168] counties through which a railroad passes, would place a low valuation on local property and fix a high rate of taxation, knowing or at least believing, that the main cost of county government would be met with taxes from the railroads which were compelled to pay the same high rate upon a one hundred per cent valuation. I cannot say from the record that this is taking place in the instant case, and that the defendant Boards have wilfully connived at it and condoned it. It is suggested in argument of counsel that such practices are being resorted to. The only proof of it is the affidavits of certain individuals that property in certain counties are given a low assessment. It is doubtful in my mind if the County Assessors know how to determine 'cash value' within the meaning of the law. I do not find in any affidavit anything to indicate just how these affiants determined the question of 'cash value', or that, in any instance they applied a proper rule of law in arriving at the 'cash value' of property.

"Every affidavit on file as to valuation represents the opinion of affiants. It may be the opinion of an expert or non expert. The defendant Boards must have considered [fol. 169] and weighed the value to be given these opinions. I have no right to assume they were arbitrarily disregarded. Is it the duty of this Court to say what value should be given to these opinions, and that the defendant Boards did not attach the proper value to such testimony. I think not. Considering the entire record there has doubtless been an undervaluation of property in some localities. The defendant Boards may have been guilty of an error of judgment in placing a proper value upon petitioner's property. But, as said by the U. S. Supreme Court in the case of Rowley vs. Chicago and N. W. R. Co., 293 U. S. 293:

'Over-valuation resulting from error of judgment will not support a claim of discrimination. There must be something that amounts to intention, or the equivalent of fraudulent purpose to disregard the fundamental principle of uniformity.'

"In another case the same Court said:

'It is not enough in these cases, that the taxing officials have merely made a mistake. It is not enough that the Court, if its judgment were properly invoked, would reach a different conclusion as to the taxes imposed. There must be a clear and affirmative showing that the difference is an [fol. 170] intentional discrimination and one adopted as a practice.'

"Chicago Great Western vs. Kendall, 266 U. S. 94:

"The petition avers that the assessment is illegal in that a proportion of the entire system value was allocated to Tennessee solely by consideration of main track mileage. After a full review of the authorities cited by counsel for petitioner and the defendant, I think the weight of authority supports the contention of the defendants that mileage apportionment is valid. It is unnecessary that I refer to and discuss all the cases. The petitioner strongly combats the holding of the Court in the 'Backus' case (154 U. S. 42) contending that it was decided at a time 'when traffic and revenue statistics were in their infancy', etc., and then the Court stated 'There may be exceptional cases.' It can be readily seen that there may arise 'exceptional cases', but the principle of legality has been so strongly affirmed in that case, and other cases, that I cannot depart from the holding.

"The court would not permit the taxing power to adopt the above method in any arbitrary and capricious manner. In order to invalidate the assessment there must be a clear [fol. 171] and affirmative showing that the method adopted was so arbitrary as to indicate an intention-discrimination. Counsel refer to a statement by Mr. Justice Holmes in *Fargo v. Hart*, 193 U. S. 495 as follows:

'In the opinion he recognized that a division by mileage is justified "so long as it may fairly be assumed that different parts of the line are about equal in value." We should read this statement in connection with the decision of the Court in *Great Northern R. Co. vs. Weeks*, 297 U. S. 135, 80 L. Ed. 552, in which the Court said:

"The problem of apportionment is a difficult one. It is impossible to formulate a rule generally applicable. Con-

trolling conditions vary greatly from time to time. Allocations to be sufficiently accurate for practical purposes must be arrived at by the exercise of sound judgment based on facts that fairly reflect the relation between value of the system as a whole and value of the part within the state."

"The foregoing is a sound statement of the law as to proper allocation. The Supreme Court of Tennessee used substantially the same language in *Franklin Co. vs. Railroad*, 80 Tenn., 521-527.

"The foregoing fully sustains the view that the assessment [fol. 172] cannot be declared invalid on the ground of improper apportionment unless it affirmatively appears that there was a fraudulent design or purpose to disregard the 'essential principle of practical uniformity.'

"It is the plain duty of the Public Utilities Commission to fix a valuation of petitioner's properties for assessment of ad valorem taxes, and the valuation so fixed should be 'cash' value. If the defendant Board performed its legal duty, and valued the petitioner's property at a figure that represents a fair cash value, and the defendant Board of Equalization, after due consideration of the record and exceptions filed by petitioner approved such assessment, the Court is without power to enter an order or decree declaring to what extent, if any, there has been an over valuation. This was expressly held in *Savage Co. vs. Knoxville*, 167 Tenn. 642.

"If, after assessing the properties of the various railroads and public utilities of the State at their respective cash values, it is made to appear that other property has been assessed in many political subdivisions of the State by local assessors, at 25%, 50% and 75% and, in some instances at 100%, the question then arises as to whether or not the [fol. 173] Railroad & Public Utilities Commission should reduce the amount of its assessments so as to equal an average in percentage value with properties in the various counties that have been under assessed or illegally assessed. If this should be done, the State would find itself engaged in endless litigation with property owners, and a large part of State, County and City revenue would be tied up indefinitely. If every county where property had been assessed at 75% or more, the property owners could appeal to the Courts for relief on the ground of lack of uniformity in assessment in violation of the Constitution, which provides

that *all* property shall be assessed at its cash value. Surely every property owner paying upon a 100% valuation would be entitled to relief if legality of assessments is to be determined by making a comparison in valuations fixed by the various assessors throughout the State.

"In the instant case, petitioners express a willingness to pay upon 75% of the present valuation, contending that this represents a fair cash value. This Court is without power to declare that this is a fair proposition and ought to be accepted. Again, if taxpayers can question the validity of every assessment on the ground of over valuation, and alleged lack of uniformity as compared with under-valuation of other property, and it is proper to fix a valuation by striking an average, it is a question as to when and how often a new average may be called for. The above statement of a vexatious problem is not in any way an exaggeration, and the problem is not new by any means. It was discussed by the U. S. Supreme Court in *Sioux City Bridge Co. vs. Dakota County*, 260 U. S. 441, 67 Law Ed. 340, and other cases. There has been a great conflict in opinion as to what should be done. In such circumstances the problem being difficult of solution and there being no statutory remedy, it is not strange that there should be a diversity of opinion. Since the Court is without power to raise or reduce an assessment, that power being vested exclusively in numerous tax assessors and Boards of Equalization, we are confined to the one problem, to-wit: whether or not the defendant Board exceeded its jurisdiction, acted illegally or fraudulently. In every case of alleged over valuation for assessment, the Court will not invalidate it, unless there is 'a clear and affirmative showing that the difference (in valuation) is an intentional discrimination, and one adopted as a practice.' *Chicago & G. W. Railroad vs. Kendall*, 266 U. S., 94, and cases cited.

[fol. 175] "The validity of the Act of 1939, which legislation is invoked and relied upon by defendant, was not fully discussed and briefed at the original hearing. It may be true that where a litigant has brought suit, seeking redress under rules of law then available, that the legislature has no constitutional right to legislate him out of Court by an attempt to provide other remedies. It is unnecessary that I should discuss the validity or invalidity of this Act since I am constrained to overrule the motion for a new trial,

holding, as I do, that the defendants' motion to dismiss, based upon other grounds, is well taken.

"It is contended that if petitioner is required to avail itself of the remedy provided in the Act that it will work an intolerable hardship. Again, if the supersedeas is discharged and is not to remain in effect pending appeal that this will result in the same burden. I have no power or authority to purge the assessment of any portion that is alleged to be illegal. There is not authority for allowing the supersedeas to remain in effect as to a part of the assessment and discharge it as to the remainder. It is quite true that if petitioner must resort to separate suits, against the various political subdivisions of the state to recover [fol. 176] illegal taxes paid or enjoin their collection, that it would be burdensome. At the same time we cannot close our eyes to the fact that if all public utilities in the state, as well as other taxpayers, should invoke the power of the Court and by the writ of supersedeas suspend the payment of all taxes until their legality had been finally determined, the state itself might suffer a grievous injury.

"The briefs furnished by able counsel show an exhaustive investigation of the legal questions involved. The case has been given the most careful consideration. I cannot discuss in detail all of the cases cited, or review every argument that is advanced in support of petitioner and the defendant. To do so would require an opinion so long and elaborate that counsel would hesitate to read it.

"The motion for a new trial is overruled and an appeal granted. The writ of supersedeas is abated and discharged. The petitioners are allowed (30) thirty days in which to perfect an appeal. The supersedeas will remain in effect during this time to enable the petitioner to make proper application to the Supreme Court for a modification of this [fol. 177] Court's order with reference to the writ of supersedeas.

A. B. Neil, Judge."

No evidence was offered by either party other than that contained in the record certified by the State Board of Equalization, and the action of the Circuit Court was rested solely on said record and the pleadings, including motions, filed herein.

The record certified by the State Board of Equalization is as follows:

Record of Assessment Proceedings of the Railroad and Public Utilities Commission and the State Board of Equalization, as Certified to the Circuit Court, Pursuant to the Writ of Certiorari Issued Herein:

1. The tax return of The Nashville, Chattanooga & St. Louis Railway, endorsed as filed with the Railroad and Public Utilities Commission March 17, 1938, which is made a part of this bill of exceptions as Exhibit No. 1 thereto.

II. Tentative assessment, dated August 22, 1938, with letter of transmissal dated August 22, 1938, signed by Dorsey B. Thomas, Secretary of the Railroad and Public [fol. 178] Utilities Commission.

“Nashville, Tennessee, Aug. 22, 1938.

Re Railroad Assessments 1938-1939

Mr. Fred Wright, Real Estate Agt., The Nashville, Chattanooga and St. Louis Ry., Nashville, Tennessee.

GENTLEMEN:

As directed by the Commission, I am enclosing you herewith copy of the Commission's assessment, showing the tentative assessment placed upon the property of your company for the years 1938-1939 for taxation purposes.

You will be allowed ten (10) days from date hereof to file exceptions to this assessment, that is, if you care to do so.

Yours very truly, (Signed) Dorsey B. Thomas, Secretary.”

DT/BCW.

[fol. 179] The Bill of Exceptions here contains assessment as reported by the Railroad and Public Utilities Commission in words and figures as in Exhibit No. 2 to the Railway's Petition for certiorari, copied hereinabove at Pages 68-79.

[fol. 180] III. Exceptions of The Nashville, Chattanooga & St. Louis Railway to the tentative assessment, endorsed filed by the Railroad and Public Utilities Commission August 31, 1938, a true copy of which is in the record as Exhibit No. 3 to the original petition; and the original of which is made a part of this bill of exceptions as Exhibit No. 2 thereto.

IV. Letter to the Railroad and Public Utilities Commission, dated August 31, 1938, signed by the General Counsel of The Nashville, Chattanooga & St. Louis Railway, transmitting and listing evidence in support of exceptions to the tentative assessment of August 22, 1938.

"Nashville, Tenn., August 31, 1938.

The Railroad and Public Utilities Commission of Tennessee.

GENTLEMEN:

For The Nashville, Chattanooga & St. Louis Railway I hand you herewith its exceptions to the tentative assessment made upon its properties in Tennessee for the biennium 1938-1939, on August 22, 1938.

[fol. 181] In support of the exceptions so filed I am transmitting to you herewith, by messenger, for filing, the following:

1. Affidavit of Fitzgerald Hall, together with 3 vols. of exhibits, Nos. 1-16 and 18-52 inclusive, and Exhibit No. 17 bound separately.

2. Affidavit of Charles Barham with Exhibit attached.

3. Affidavit of L. E. McKeand, with exhibits 1-8 inclusive attached.

4. Affidavit of C. M. Darden, with exhibit photographs attached.

5. Assessment of N. C. & St. L. Ry. for 1934 and 1936, identified by affidavit of W. S. Hackworth.

6. Charts and tables containing statistical record of present status and condition of American railroads, verified by affidavit of J. H. Parmelee.

7. Affidavit of Wm. R. Pouder, with exhibit attached.

8. Affidavit of William P. Brooks.

9. Affidavit of T. M. Mitchell, with exhibits attached.

[fol. 182] 10. 124 affidavits of county tax assessors, other county officers and citizens, relating to local assessments of property for ad valorem taxation.

11. Certified copy of a financial statement for Hamilton County, issued by the County Judge.

12. Bound volume containing copies of the 124 affidavits referred to under item 10 above, classified by counties, indexed and analyzed for convenient reference, with a prefa-

tory affidavit of the undersigned, to which excerpts from the Rye Tax Report are an exhibit.

An additional copy of any or all of the foregoing will be furnished the Commission if desired.

With the permission of the Commission I shall file a supporting brief on or before September 14, 1938, the date assigned for the yearing.

Respectfully, (Signed) Wm. H. Swiggart, Counsel
for The Nashville, Chattanooga & St. Louis Rail-
way."

V. Letter from Secretary of Railroad and Public [fol. 183] Utilities Commission, dated August 29, 1938, acknowledging receipt of exceptions to tentative assessment, and fixing September 14, 1938, as date for hearing.

"August 29, 1938.

Mr. Fred Wright, Real Estate Agt., The Nashville Chattanooga and St. Louis Railway, Nashville, Tennessee.

DEAR SIR:

Re: Exceptions to tentative assessment—1938-1939.

Your exceptions to the tentative assessment made by this Commission upon the property of the Nashville Chattanooga and St. Louis Railway, received and filed.

The Commission has set Wednesday afternoon, September 14th., at 2:00 o'clock as the time for hearing your exceptions.

Yours very truly, — — —, Secretary."

T/H/W/

VI. The typewritten record of the hearing held by the Railroad and Public Utilities Commission, September 14, 1938, which is made a part of this bill of exceptions as Exhibit No. 3 thereto.

[fol. 184] VII. Opinion of the Railroad and Public Utilities Commission, overruling exceptions to tentative assessment, dated October 5, 1938.

The Nashville, Chattanooga & St. Louis Railway
Before the Railroad and Public Utilities Commission of
the State of Tennessee

Nashville

In Re: Assessment of the Property of The Nashville, Chattanooga & St. Louis Railway for the purpose of taxation for the years 1938-1939.

Appearances: The Nashville, Chattanooga & St. Louis Rwy:
W. H. Swiggart.

OPINION OVERRULING EXCEPTIONS

Written exceptions to the tentative assessment were filed; new evidence, affidavits and exhibits were also filed and argument heard. Evidence indicated the corporation's net railway revenues were increasing since the tentative assessment was made and that its present financial condition was good, that is, it had on hand \$3,569,801 in cash and non-taxable Federal bonds and notes. After carefully considering all evidence and other matters submitted, we are of [fol. 185] the opinion and find that exceptions should be, and they are, hereby denied.

(Signed) Porter Dunlap, Chairman; W. H. Turner, Commissioner; Leon Jourolmon, Jr., Commissioner."

Oct. 5, 1938.

VIII. Exceptions and prayer for appeal to the State Board of Equalization, filed by The Nashville Chattanooga & St. Louis Railway; and order granting appeal; dated October 7, 1938.

Before the Railroad and Public Utilities Commission of
Tennessee

In re: Assessment of the property of The Nashville, Chattanooga & St. Louis Railway for the purpose of taxation for the years 1938-1939.

The Nashville, Chattanooga, & St. Louis Railway, having duly filed its exceptions to the tentative valuation and [fol. 186] assessment of its properties made by the Railroad and Public Utilities Commission on August 22, 1938, said exceptions having been supported by written evidence filed

on August 31, 1938, and at the hearing on September 14, 1938, now respectfully excepts to the action of the Commission in denying said exceptions by its order of October 5, 1938; and prays an appeal to the State Board of Equalization that said exceptions may be there further considered and said valuation and assessment reduced and equalized as set out in said exceptions; and further prays that all of the evidence considered by the Commission, including that filed by the Railway, the record of the hearing of said exceptions on September 14, 1938, the exceptions filed by the Railway, and the ~~several orders and findings~~ of this Commission, be certified by the Secretary of the Commission and transmitted to the State Board of Equalization in the manner prescribed by law for its proper review and action thereon.

This October 7, 1938.

The Nashville, Chattanooga & St. Louis Railway, by
Wm. H. Swiggart, General Counsel.

[fol. 187]. The foregoing prayer for appeal is granted, and the Secretary of this Commission is directed to certify the record to the State Board of Equalization as prayed.

This October 7, 1938.

(Signed) Porter Dunlap, Chairman. W. H. Turner,
Commissioner. Leon Joulmon, Jr., Commis-
sioner."

IX. Record of hearing before State Board of Equalization, November 2, 1938:

"A meeting of the State Board of Equalization was held in the State Capitol in the room adjacent to the Governor's Office at ten A. M. Wednesday, November 2nd, with the following members present:

Mr. A. B. Broadbent, Chairman; Mr. Grover Keaton, Mr. Wallace Edwards, Gen. William F. Barry, Mr. Newt Cannon, Jr., Assistant Secretary.

[fol. 188] "Mr. Walter Stokes, Jr., Secretary, was not present and did not hear this appeal because of the fact that he was a Director in the Nashville, Chattanooga and St. Louis Railway.

The appeal of the Nashville, Chattanooga and St. Louis Railway was represented by Judge William Swiggart, at-

torney, and Mr. W. A. Miller. This appeal had been heard previously by the Railroad and Public Utilities Commission and all the records pertaining thereto were certified to the State Board of Equalization and have become a part of their records.

Judge Swiggart stated that there was some additional evidence in the form of affidavits, which he had failed to file with the Railroad and Public Utilities Commission, and would like to file as a part of the records of the State Board of Equalization. The Board agreed to accept this additional evidence. Judge Swiggart stated that he had divided his argument into three main items as follows: First, the valuation of the property comprising (comprising) the railway system operated by the Nashville, Chattanooga and St. Louis Railway; second, the proportion of the system's value that may be properly assignable to the State of Tennessee for the proportion of taxes; third, the equalization of this [fol. 189] company's taxpayers in comparison with the other taxpayers.

OFFERS IN EVIDENCE :

Judge Swiggart furnished the Board with written copies of all of his evidence which I shall list as follows:

Exhibit "A"—Prayer for appeal from the assessment on the Nashville, Chattanooga and St. Louis Railway by the Railroad and Public Utilities Commission to the State Board of Equalization.

Exhibit "B"—Net Railway Operating Income in Tennessee 1937 for the Nashville, Chattanooga & St. Louis Railway.

Exhibit "C"—Income Statement Data concerning the Nashville, Chattanooga & St. Louis Railway.

Exhibit "D"—Distribution of Railway Operating Revenues Expressed in Cents Per Dollar of Gross Revenue for the N. C. and St. L. Railway Compared with Class 1 Railways in the United States—Years 1935, 1936 and 1937.

Exhibit "E"—Comparative State—Freight Expense and Efficiency.

Exhibit "F"—Exhibit Nos. 1(a) to 9, inclusive, to the [fol. 190] affidavit of Fitzgerald Hall.

Exhibit "G"—Exhibit Nos. 10-24, inclusive to the Affidavit of Fitzgerald Hall.

Exhibit "H"—Exhibit Nos. 25 to 52, inclusive to the Affidavit of Fitzgerald Hall.

Exhibit "I"—Second Affidavit of William R. Pouder.

Exhibit "J"—Tables and Charts made from reports made by the railroads of the United States to the Interstate Commerce Commission.

Exhibit "K"—Exhibit No. 17 to the Affidavit of Fitzgerald Hall.

Exhibit "L"—Affidavit of C. M. Darden.

Exhibit "M"—Assessment of the property returned by the Nashville, Chattanooga & St. Louis Railway for the purpose of taxation for the years 1934-1935.

Exhibit "N"—Exceptions of the Nashville, Chattanooga and St. Louis Railway to Tentative Assessment for the Biennium 1938-1939.

Exhibit "O"—Exceptions of The Nashville, Chattanooga & St. Louis Railway to the Assessment of its properties for Ad Valorem Taxation in the State of Tennessee for the [fol. 191] Biennial Period 1938-1939, as made by the Railroad and Public Utilities Commission of the State of Tennessee, and Transmitted by said Commission to said Railway August 22, 1938.

Exhibit "P"—Affidavit of Earl Roach In re: Valuation of The Nashville, Chattanooga and St. Louis Railway for Purposes of Taxation, Years 1938-1939.

Exhibit "Q"—Affidavit of Charles Barham In Re: Valuation of The Nashville, Chattanooga & St. Louis Railway for Purposes of Taxation, Years 1938-1939.

Exhibit "R"—Affidavit of Fitzgerald Hall In Re: Valuation of The Nashville, Chattanooga & St. Louis Railway for Purposes of Taxation, Years 1928-1939.

Exhibit "S"—Distribution of Railway Operating Revenues Expressed in Cents Per Dollar of Gross Revenue for the Nashville, Chattanooga & St. Louis Railway Compared with Class 1 Railways in the United States—Years 1935, 1936 and 1937.

Exhibit "T"—Affidavits Re: Ratio of Assessed Value to [fol. 192] Actual Value of Property in Tennessee.

Exhibit "U"—Brief of The Nashville, Chattanooga & St. Louis Railway.

Exhibit "V"—Affidavit of L. E. McKeand In Re: Tennessee Assessment of The Nashville, Chattanooga & St. Louis Railway for Purposes of Taxation, Years 1938-1939.

Exhibit "W"—Original Affidavits.

Judge Swiggart based his speech on the above exhibits by referring to different items in them.

The Board adjourned for lunch at 12:30 and met again at two o'clock.

The same members were present at the afternoon session and after Judge Swiggart finished his argument Mr. Henley, representing the Railroad and Public Utilities Commission replied.

REPLY ON BEHALF OF COMMISSION

His reply was as follows: "In the last biennial assessment, the combined net railway operating income for the two years preceding amounted to \$1,476,554. In the present biennial assessment the combined net railway operating income for the two years preceding amounted to \$2,223,132, [fol. 193] which you will note is considerably more than the revenue which was used in part for making the assessment of two years ago. Two years ago the N., C. & St. L. Railway agreed to the assessment made by the Commission, which was approximately \$200,000.00 more than the assessment which they are now contesting.

"As to the cost of transportation, the length of trains and other items referred to in the typewritten memorandum submitted by the carrier:

Borrowing an expression from the Interstate Commerce Commission which they frequently use, I will say that the comparison would have been more convincing had it been made with railroads that were nearer home, rather than with railroads of the nation as a whole.

It is a well known fact that the length of trains and the cost of operating same in the nation as a whole, includes such carriers as the Chesapeake and Ohio Railroad, the

Norfolk and Western Railway, the Virginian Railway and the Clinchfield Railroad where they frequently haul more than 100 cars in a train. I think you will agree with me that these roads are not comparable with the N., C. & St. L. Railway. Especially will you agree with me when I tell you [fol. 194] the Clinchfield Railroad is here in Tennessee and it is a coal carrying road. While it has not for years paid its fixed charges its distributable property in the State of Tennessee is assessed at \$40,000.00 per mile. That line accepted this assessment and has not appealed to your Board.

The value of the entire N. C. & St. L. Railway property, together with its leased lines is now assessed by the Commission at \$23,996,604.00, which has the effect of valuing the distributable property in Tennessee at \$16,158.00 per mile.

The corporation asks that the total value of the entire property together with the leased property be valued at \$16,021,298.00 which will have the effect of making the assessed value of the distributable property in Tennessee, \$9,007.00 per mile, as compared with the value of distributable property of other railroads in Tennessee as made by this Commission as follows:

Louisville and Nashville Railroad, \$34,683.00. That line has not appealed to your Board.

Southern Railway Company, \$21,251.00.

Harriman and Northeastern Railroad, which is not even a Class I Railroad, it operates from Harriman to Petros, [fol. 195] assessed value of distributable property per mile \$12,000.00.

East Tennessee and North Carolina Railroad, it is a narrow gauge road, operated from Johnson City to a point in North Carolina, \$12,000.00 per mile.

Mobile and Ohio Railroad Company, which is now in the hands of receivers, \$15,000 per mile.

Gulf, Mobile and Northern Railroad, \$12,000.00 per mile.

Illinois Central Railroad, \$46,451.00 per mile.

Kansas City, Memphis & Birmingham Railroad, which is now in the hands of receivers, \$26,183.00 per mile.

Clinchfield Railroad which has not for years earned its fixed charges, \$40,000.00 per mile. It has not appealed to your Board.

The railway asks that you take its net earnings for 1937 capitalize them at 6% and make the assessment accordingly,

overlooking the constitution which says the taxes shall be equal and uniform throughout the State.

The framers of the present Tennessee law must have foreseen just such a condition as exists throughout the nation [fol. 196] today. That is, with a great many railroads their net railway operating income is small and in some instances practically nothing.

Not once in the law do we find the word 'net'. The law sets out plainly what shall be considered and those elements principally are the gross receipts, the value of the stocks and bonds and the value of the corporate property.

The railway asks that you put aside all of these elements and assess its line upon basis of the net railway operating income alone.

The N. C. & St. L. Railway is peculiarly situated when it comes to assessing it for taxes as a railroad. It returns for taxation in Tennessee business property in the heart of Chattanooga valued at nearly a million dollars, consisting of lots, store houses, department stores, bus stations, filling stations, etc., most of which is on Broad and Market Streets. Some of this property is rented for a fair rental, some at a nominal rental, and some of it is vacant.

Under the proposed system of assessing the property, that property which is not rented would not be subject to taxation at all. \$1,684,994 of material and supplies on hand [fol. 197] would escape taxation and so would \$1,526,562 in cash having a situs in Tennessee also escape taxation.

The N. C. & St. L. Railway operates 1,115.35 miles of railroad. It owns 748.63 miles, or in round numbers 67%. It leases 366.72 miles, or in round numbers 33%.

Its bonds rest on only 67% of the property which it operates. Its stockholders have an equity in only 67% of the mileage which it operates. 61.72% of the mileage operated is in Tennessee.

The railway stresses three points that are seriously affecting its net income.

1. Falling off of traffic.

The Interstate Commerce Commission as well as this State Commission has authorized the railway to place a surcharge of something over 5% upon all its freight traffic handled, which has the effect of in some measure taking the

burden from the railway and placing it upon the shipping public.

2. Increased Federal taxes.

They now ask that the State of Tennessee, its Municipalities and Counties, in a measure assume this burden by reducing the taxes in Tennessee in order to assist the Railway to pay the taxes imposed by the Federal Government.

3. The excessive rental which the N. C. & St. L. Railway pays for the lines which it leases. That is, during the past 7 years it took 90% of the net operating income derived from the entire line to pay the rental charge for its leased lines which constituted $\frac{1}{3}$ of its main track mileage.

The W. & A. Division running from Chattanooga to Atlanta is owned by the State of Georgia, and this line failed by \$490,000.00 per annum to produce a sufficient revenue to pay the State of Georgia for its rental.

The P. & M. Division running from Paducah, Kentucky to Memphis, Tennessee failed by \$176,992.00 per annum to pay the rental which was due to the Louisville and Nashville Railroad the owners.

In addition to the taxes paid to the State and Counties and Municipalities, the N. C. & St. L. Railway pays to the Louisville and Nashville Railroad an annual rental for the P. & M. [fol. 199] Division of \$206,132.00, which is 5% of the agreed value of the road, the agreed value being \$4,122,640.00.

In 1928 the N. C. & St. L. Railway properties in Tennessee were assessed at \$24,795,303.00, as compared with the present assessment made by the Commission of \$16,223,194.00.

For the first 7 months of 1938, the N. C. & St. L. Railway did not make its fixed charges. However, they have done so well in August and September that for the first 9 months of 1938 they have not only made their operating expenses and their fixed charges but in addition thereto have a net income of approximately \$140,000.00 over and above all expenses and fixed charges.

The N. C. & St. L. Railway unlike other railroads have a nice cash surplus on hand. Its financial set up is good. On January 1st of this year they had on hand cash and non-taxable Federal bonds and notes in the amount of \$3,569,-

\$801.00, to which should be added the \$140,000.00 which they have earned since January 1, 1938.

At the conclusion of Mr. Henley's reply the case was closed and the Board adjourned until the next meeting, the [fol. 200] date to be announced later.

Mr. Henley further stated in his argument the following:

"In further reference to Judge Swiggart's remarks as to the age and run down condition of the rolling stock and equipment of the N. C. & St. L. Railway to my mind there is only one correct place to get the true information as to the condition of this rolling stock and equipment, and that is from the annual report of the President to its stockholders, which annual report for the year 1937 includes among other things the following: "During the year 878 freight cars were retired and dismantled; 45 steel underframe flat cars were converted to all steel box cars; 500 new all-steel box cars were purchased and 6 second-hand steel coaches were purchased and reconditioned for service."

"Eighteen passenger coaches were air conditioned."

"Equipment is sufficiently maintained to handle present and prospective traffic."

You will note that 500 new all steel box cars were purchased and put into service, 6 second-hand steel coaches were purchased, reconditioned and put into service, 18 passenger coaches were air conditioned; 45 flat cars were converted into all steel box cars and the equipment is sufficiently maintained to handle present and prospective traffic."

X. Opinion of State Board of Equalization approving assessment:

"N. C. & St. L. Railroad Company Appeal

"This appeal from the assessments made by the Public Utilities Commission, of the properties of the Company, located in Tennessee, was heard by the State Board of Equalization, upon the record as presented to said Commission, the exceptions filed to its assessment, additional affidavits, charts and reports of company official, argument of counsel and of representative of the Commission, and the entire record, and it is now before us for determination.

"This appeal presents to the Board a difficult problem. Each member is ex officio. Therefore, adequate time is not

ours to give the necessary investigation to entirely satisfy [fol. 202] even ourselves, that we may reach an equitable conclusion. However, the responsibility is ours and we would not shirk it.

"The exceptions filed are many, and are based upon every method known to the law, touching the valuation and assessment of railroad property, as well as the method used by the Commission, in fixing the assessment.

"The assessment made by the Commission, for the years 1938-1939 is \$16,223,194.00 of Companies property or \$276,804.00 less than the assessment made for the previous years of 1936-1937, and from such former assessment the Company has appealed. The records of the Commission further disclose, that previous assessment of Companies property, over a period of ten years follow :

1923-1924	\$24,000,000.00
1925-1926	24,795,303.00
1927-1928	24,795,303.00
1929-1930	26,000,000.00
1931-	23,750,000.00
1932-1933	17,000,000.00
1934-1935	16,999,966.00

"The record before us shows that the Company agreed to the assessment made for the years 1936-1937. It will be seen, that the assessment made for the year of 1938-1939, [fol. 203] is a substantial reduction from the high of 1929-1930, indeed, a reduction in the sum of \$9,776,806.00. We are convinced that this reduction of companies assessment from the high point in recent years, is comparable with the reduction enjoyed by owners of other property, or any class of property, within the bounds of this State.

"The Company objects to the method used by the Commission in reaching the valuation of its property. It appears in the record, and it was stated in argument, that the Commission, in reaching its conclusion, looked to the capital stock, corporate property franchises and gross receipts, the market value of the shares of stock and bonded indebtedness, and all evidence as afforded by the returns, statements and schedules made by the company. We assume that their statements are true, and we understand that these elements must be used, as a matter of law, in making such assessments.

"Another objection is raised by the Company. That is, the governmental units throughout the State assess other property at less than its actual cash value, while in the same jurisdiction, the Commission assessed its property at its actual cash value, thereby violating the Constitution, on the subject of taxation. The affidavits of William H. Pouder, who is Executive Secretary of the Tennessee Taxpayers [fol. 204] Association, and who has compiled a great deal of data on actual cash values, and assessed values of property in the various counties of the state. This information is very interesting, but we are not familiar with the method used by him in reaching his figures on actual cash value, nor do we know how the percentage of cash value was reached for assessable purpose. Many other affidavits are in the record purporting to establish that theory, but we think they are subject to the same objection as that of Mr. Pouder.

"For the foregoing reasons, we are satisfied that the assessment of companies property is just and fair to it, and in line with all other like property within the State.

"This assessment of companies property at \$16,223,194.00 will stand.

"Neither Governor Gordon Browning nor Commissioner Walter Stokes Jr. participated in the hearing of this appeal.
(Signed) A. B. Broadbent.

Keaton & Edwards concur."

XI. The affidavit of Fitzgerald Hall, which is made a part [fol. 205] of this bill of exceptions as Exhibit No. 4 thereto.

XII. Three bound volumes containing Exhibits Nos. 1-52 inclusive to the affidavit of Fitzgerald Hall, which three volumes are made parts of this bill of exceptions as Exhibits Nos. 5, 6 and 7, respectively thereto.

XIII. Exhibit No. 17 to the affidavit of Fitzgerald Hall, which is made a part of this bill of exceptions as Exhibit No. 8 thereto.

XIV. The affidavit of Charles Barham, with exhibit attached, which is made a part of this bill of exceptions, as Exhibit No. 9 thereto.

XV. The affidavit of L. E. McKeand, with exhibits 1-8 attached, which is made a part of this bill of exceptions as Exhibit No. 10 thereto.

XVI. The affidavit of C. M. Darden, with exhibit photographs attached, which is made a part of this bill of exceptions as Exhibit No. 11 thereto.

XVII. Assessments of The N. C. & St. L. Railway made in 1934 and 1936, verified by affidavit of W. S. Hackworth, made a part of this bill of exceptions as Exhibit No. 12 thereto.

XVIII. Statistical tables and charts, verified by affidavit [fol. 206] of J. H. Parmelee, made a part of this bill of exceptions as Exhibit No. 13 thereto.

XIX. Volume containing affidavits of Wm. R. Pouder, Wm. P. Brooks, T. H. Mitchell, and 124 other affidavits of county tax assessors, other county officers and citizens, all of which are made a part of this bill of exceptions as Exhibit No. 14 thereto.

XX. Volume containing original affidavits of Wm. H. Swiggart, with exhibits, and copies of affidavits included in Exhibit No. 14, all of which is made a part of this bill of exceptions as Exhibit No. 15 thereto.

XXI. The second affidavit of Wm. R. Pouder, with exhibit, which is made a part of this bill of exceptions, as Exhibit No. 16 thereto.

XXII. The affidavit of Earl Roach, which is made a part of this bill of exceptions as Exhibit No. 17 thereto.

XXIII. Brief of The Nashville, Chattanooga & St. Louis Railway, filed with the Railroad and Public Utilities Commission, which is made a part of this bill of exceptions as Exhibit No. 18 thereto.

XXIV. A collection of tables, charts and maps, included in the record certified to the Circuit Court as unattached papers, and bound together for convenience; all of which is [fol. 207] made a part of this bill of exceptions as Exhibit No. 19 thereto.

XXV. The foregoing items, I to XXIV inclusive, constitute all and entire the record certified to the Circuit Court by the State Board of Equalization and the Railroad and Public Utilities Commission, of the State of Tennessee, pursuant to the writ of certiorari issued by the Court; said

record having been accompanied by the following certificates:

"IN THE CIRCUIT COURT OF DAVIDSON COUNTY, SECOND DIVISION, HONORABLE A. B. NEIL, JUDGE:

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

VS.

GORDON BROWNING, GROVER KEATON, A. B. BROADBENT, WALLACE EDWARDS and Walter Stokes, Jr. (State Board of Equalization)

CERTIFICATE OF STATE BOARD

"In obedience to writs of certiorari and supersedeas granted in this cause Monday, October 1, 1938, the defendants, constituting the State Board of Equalization, hereby certify that the record and transcript enclosed herewith constitute the full and entire record and transcript of the as-[fol. 208] sessment of petitioner's property as was filed with the State Board of Equalization by the Railroad and Public Utilities Commission pursuant to Code Section 1533.

(Signed) Gordon Browning, Grover Keaton, A. B. Broadbent, Wallace Edwards, Walter Stokes, Jr., A. B. Broadbent, Secretary. By W. F. Barry, Jr., Asst. Atty. Gen."

"IN THE CIRCUIT COURT OF DAVIDSON COUNTY, SECOND DIVISION, HONORABLE A. B. NEIL, JUDGE:

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

VS.

GORDON BROWNING, GROVER KEATON, A. B. BROADBENT, WALLACE EDWARDS and Walter Stokes, Jr. (State Board of Equalization)

CERTIFICATE OF RAILROAD & PUBLIC UTILITIES COMMISSION

[fol. 209] "In support of the certification of the record and transcript as made by the State Board of Equalization in this cause, the Railroad & Public Utilities Commission, composed of Porter Dunlap, Leon Jourlmon and W. D. Hudson, hereby certify that:

"Prior to the issuance of writs of certiorari and supersedeas in this cause, the entire record and transcript was

physically returned to the Railroad & Public Utilities Commission by the State Board of Equalization, and has remained in the physical possession of the Railroad & Public Utilities Commission since such time.

“The Railroad & Public Utilities Commission further certifies that the record and transcript as enclosed herewith has been kept intact since it was received from the State Board of Equalization and is a full and complete record and transcript of all proceedings had before the Railroad & Public Utilities Commission relative to the assessment of petitioner's property and which was filed in its identical form with the State Board of Equalization as required by Code Section 1533.

“The Railroad & Public Utilities Commission further certifies that all evidence introduced before said Commission was reduced to writing, as required by Code Section 1523, and that the language ‘together with such other evidence’ contained in the assessment made and published by the Railroad & Public Utilities Commission August 22, 1938, was simply the language of Code Section 1526 and that no evidence was heard or considered by the Railroad & Public Utilities Commission in making the assessment of petitioner's property except and alone as enclosed herewith and certified.

(Signed) Porter Dunlap, Leon Jourolmon, Jr., W. D. Hudson.”

ORDER RE EXHIBITS

It is considered by the Court that the several exhibits to this bill of exceptions, Nos. 1-19 inclusive, are in proper and convenient form for examination by the Supreme Court, and that because of the maps, charts, tables, etc., included therein, said exhibits may not be conveniently copied; wherefore it is directed that all said exhibits be transmitted to the Supreme Court as a part of this bill of exceptions and the record on the appeal in error.

The rules governing the practice and procedure of the Circuit Court of Davidson County, duly adopted and made effective in the Second Circuit Court, contain the following provision:

“2. A motion for a new trial and/or in arrest of judgment, shall not be entered upon the minutes of the Court, but it shall be filed as herein provided, and upon appeal

[fol. 211] it shall be authenticated by the signature of the Trial Judge and made a part of the transcript to be filed in the appellate Court in its original form. * * *

ORDER, SETTLING BILL OF EXCEPTIONS

The foregoing bill of exceptions contains all of the evidence heard and considered by the Court in the consideration and disposition of this case, and correctly sets forth the various actions taken by the Court. It is, therefore, signed and sealed by the Court and ordered to be filed as a part of the record. This 24th day of June, 1939.

(Signed) A. B. Neil, Judge of the Second Circuit Court of Davidson County, Tennessee.

Approved as correct: — — —, Counsel for petitioner.
— — —, Counsel for Defendants.

[File endorsement omitted.]

[fols. 212-213] Bond on appeal for \$250.00, filed June 15, 1939, omitted in printing.

[fol. 214] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 215] IN SUPREME COURT OF TENNESSEE

ASSIGNMENTS OF ERROR

The plaintiff-in-error, The Nashville, Chattanooga & St. Louis Railway, assigns as error that the action of the Circuit Court in dismissing the petition for certiorari and in directing that the supersedeas be discharged is supported by no evidence in the record and is contrary to the law and constitutional provisions cited herein; wherefore plaintiff-in-error respectfully insists that the judgment of the Circuit Court be reversed and that judgment be entered by the Court granting the relief prayed in said petition.

Judgment of Circuit Court, Rec. pp. 90-91, 117-118.

And plaintiff-in-error specifically assigns as error that the Circuit Court erred in overruling the several grounds of its motion for a new trial, as herein below set out.

The Court erred in overruling the first ground of the motion for a new trial, which was as follows:

1

"The Court erred in failing to hold and adjudge that the assessment under review is null and void because based upon and including interest-bearing securities and corporate stocks of the value of \$2,484,000, not subject to ad valorem taxation by the laws of Tennessee, as averred in Section VI of the original petition. The failure of the Court to so rule subjected petitioner to an unjust and unreasonable discrimination in violation of the due process of law and equal protection of the law clauses of the Four-[fol. 216]teenth Amendment to the Constitution of the United States, and in violation of Article 1, section 8, and Article 2, section 28, of the Constitution of Tennessee."

Motion for New Trial, Rec. pp. 121-122.

Petition for Certiorari, Rec. pp. 15-16.

Petitioner's exceptions to original assessment, section 1, paragraph 11, Rec. p. 59.

Original assessment of Railroad and Public Utilities Commission, Exhibit 2 to petition, Rec. pp. 152, 157.

Response of Railroad and Public Utilities Commission to exceptions filed by petitioner, Rec. p. 164.

Original tax return, pp. 16-17.

(Exhibit No. 1 to Bill of Exceptions.)

Acts, 1931 (2nd Extra Session), Chapter 20.

2

The Court erred in overruling the second ground of the motion for a new trial, which was as follows:

"The Court erred in failing to hold and adjudge that the assessment under review is null and void because it is averred in section VII of the petition, as amended, and is shown by the assessment record certified to the Court, [fol. 217] that said assessment is based upon a finding of value of petitioner's railroad system property in the sum of \$23,996,604.14, which is in substantial excess of any reasonable opinion or estimate of value supported by or deducible from any evidence upon which such assessment was made, and which finding of value is not supported by or based upon any evidence in the record upon which assessment was made, all of the evidence showing that the actual value of all said property is not in excess of \$16,021,298; and because the assessment so made of petitioner's property in Tennessee is unreasonably, arbitrarily and

therefore illegally excessive and confiscatory, in violation of the laws of Tennessee and of the provisions of the Federal and State Constitutions cited in paragraph 1 of this motion, and constituting an illegal interference with and obstruction to interstate commerce, in violation of Article 1, section 8, of the Constitution of the United States."

Motion for New Trial, Rec. pp. 122-123.

Petition, Rec. pp. 16-24, 36-37.

Affidavit of L. E. McKeand, Exhibit to Bill of Exceptions No. 10.

Affidavit of Charles Barham, Exhibit to Bill of Exceptions No. 9.

[fol. 218] Affidavit of C. M. Darden, Exhibit to Bill of Exceptions No. 11.

Affidavit of Fitzgerald Hall, Exhibit to Bill of Exceptions No. 4.

Affidavit of J. H. Parmalee, Exhibit to Bill of Exceptions No. 13.

Original tax return; Exhibit to Bill of Exceptions No. 1.

3.

The Court erred in overruling the third ground of the motion for a new trial, which was as follows:

"The Court erred in failing to hold and adjudge the assessment under review null and void, as violative of petitioner's constitutional and statutory rights cited in section VII of its petition herein, as amended, because it is averred in the petition, and shown by the certified record of the assessment, that the assessment and valuation of petitioner's property was made upon an assumption of the correctness of assessments and valuations of prior years, and without consideration of the evidence of present value duly submitted to the Railroad and Public Utilities Commission and the State Board of Equalization and certified to this Court."

[fol. 219] Petition, section VII and amendment, Rec. pp. 16-24, 80-81.

Motion for New Trial, Rec. p. 123.

Response of Railroad and Public Utilities Commission to petitioner's exceptions, and opinion filed by State Board of Equalization, Rec. pp. 164, 178-181.

The Court erred in overruling the fourth ground of the motion for a new trial which was as follows:

"The Court erred in failing to hold and adjudge that the Railroad and Public Utilities Commission acted illegally, in contravention of the requirements and provisions of the statutes of Tennessee, the due process of law clause of the Fourteenth Amendment to the Constitution of the United States, and of Article 1, section 8, and Article 2, section 28, of the Constitution of Tennessee, in finding and assessing the value of petitioner's distributable property in Tennessee to be the average value per mile of the system distributable property multiplied by the number of miles of main track in Tennessee, thus assigning to Tennessee for taxation therein 71.73 per cent of the value of the system distributable property, while in the same assessment the [fol. 220] said Commission found no uniformity of per mile value among the several branches and divisions of petitioner's railroad system, assigning values thereto ranging from \$3,300 per mile to \$37,200 per mile, and found that 62.3 per cent of the Tennessee mileage (498 miles out of 800) is of less per mile value than the average found for the system; the Commission's specific finding of per mile value by divisions demonstrating that ~~the~~ Commission found that not more than 65 per cent of the system distributable property value is in Tennessee instead of the 71.73 per cent assessed to the State, a difference in assessment of \$1,212,558."

Petition for Certiorari, Rec. pp. 25-28; Amendment, Rec. pp. 78-79.

Motion for New Trial, Rec. p. 124.

Assessment, Rec. pp. 53, 57.

Exceptions to Assessment, Rec. pp. 66-68.

Code section 1526.

The Court erred in overruling the fifth ground of the motion for a new trial, which was as follows:

[fol. 221] "The Court erred in failing to find and adjudge that the use by the Railroad and Public Utilities Commission and the State Board of Equalization of the ratio of main track mileage in Tennessee to main track mileage of the

system, as the *sole* basis or measure of the value of petitioner's distributable property assessable in Tennessee, is shown by the evidence to have been an arbitrary and unreasonable and therefore illegal means or method of assessment, having the effect of importing in Tennessee for taxation property values existing only in other states and beyond the jurisdiction or power of this State to tax; in that said ratio does not 'fairly reflect the relation between value of the system as a whole and value of the part within a state.' (Great Northern Ry. v. Weeks, 297 U. S. 135). By said illegal method of assessment petitioner is deprived of substantial rights guaranteed to it by Article 1, Section 8, and Article 2, section 28, of the Constitution of Tennessee and by the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

"The evidence, particularly the answer of petitioner to the Railroad Commission's questionnaire, pages 17-21, and the affidavit of L. E. McKeand, pages 8-11 (Exhibit 3), 13-14 (Exhibit 5), 19-20 (Exhibit 8, demonstrates clearly that the [fol. 222] per mile value of petitioner's system outside Tennessee is substantially greater than that within the state. Of special significance is the showing (Exhibit 8 to the affidavit of L. E. McKeand) that the Tennessee mileage produced in 1937 a net railway operating income which was, per mile of main track, less than half (41.84%) of the similar income per mile of the mileage outside Tennessee; that the Interstate Commerce Commission, by inventory has found the value measured by cost of the fixed property in Tennessee to be only 64.11 percent of the system property, instead of the 71.73 percent assessed (McKeand, Exhibit 5); and that the net railway operating income produced by the railway in Tennessee for 1937 was only 51.5 percent of the net income produced by the entire system."

Petition for Certiorari, Rec. pp. 25-28; Amendment, Rec. pp. 78-79.

Motion for New Trial, Rec. p. 124.

Assessment, Rec. pp. 53, 57.

Exceptions to Assessment, Rec. pp. 66-68.

Code, Section 1526.

The Court erred in overruling the sixth ground of the motion for a new trial, which was as follows:

"The Court erred in failing to hold and adjudge that [fol. 223] the inclusion of the so-called 'West Nashville

Branch' as main track mileage of 3.65 miles, in computing the value of petitioner's distributable property in Tennessee, was arbitrary and unreasonable, and therefore illegal, because all the evidence shows that said branch consists entirely of side tracks and industrial tracks which are a part of the Nashville Terminals, and possesses none of the attributes of main track."

Petition for Certiorari, Rec. pp. 28-29.

Motion for New Trial, Rec. p. 126.

Exceptions filed to tentative assessment, section 1, paragraph 15, Rec. p. 65.

Affidavit, Fitzgerald Hall, pp. 34-35, (Exhibit No. 4 to Bill of Exceptions).

7

The Court erred in overruling the seventh ground of the motion for a new trial, which was as follows:

• "The Court erred in failing to find and adjudge that the assessment under review is null and void, as in violation of Article 1, section 8, and Article 2, section 28, of the Constitution of Tennessee, the due process of law clause and equal protection of the law clause of the Fourteenth Amendment [fol. 224] to the Constitution of the United States, in that the assessment of petitioner's property is made at its actual value as found by the Railroad and Public Utilities Commission, upon which assessment and value it is to be subjected to state, county and municipal tax rates applicable alike to all property within the taxing jurisdiction, while the property of all taxpayers assessed by county and municipal assessors is assessed for 1938 taxes at an average percentage or ratio of only two-thirds of its actual value as found by such local assessors, the assessments in no county or municipality wherein petitioner's property is subject to taxation exceeding 75 percent of such actual value; such ratio assessment or underassessment of other property being shown by the uncontroverted evidence to have been voluntarily, intentionally, wilfully and systematically made by the local tax assessors, pursuant to long-established practice and custom of which the Supreme Court of Tennessee has taken judicial notice and which is fully proven in the record of the assessment proceedings.

"Petitioner's exception above cited was ignored by the Railroad and Public Utilities Commission. The State

Board of Equalization, in its opinion filed with the record, found that the assessment was 'in line with all other *like* property within the state,' thereby resorting to a theory of [fol. 225] classification of property for ad valorem taxation contrary to the express language and direction of Article 2, section 28, of the Constitution of Tennessee. The opinion of the State Board of Equalization shows by its recitation that no proper consideration was given to the sworn statements of tax assessors that they had systematically and intentionally assessed the property of taxpayers generally at from fifty to seventy-five percent of its actual value. This evidence, uncontradicted on the record, is a part of the common knowledge of every taxpayer in the state, is made a part of current history by the public records quoted in the first affidavit in the volume cited, and is judicially recognized by the Supreme Court. The refusal of the State Board of Equalization to equalize petitioner's assessment is shown by the reasons assigned by the Board to have been a denial of due process of law and the equal protection of law, against which petitioner is entitled to relief in this case and by this Court."

Petition for Certiorari, Rec. pp. 29-34.

Motion for New Trial, Rec. pp. 127-129.

Exceptions to assessment, section III, paragraph 1, Rec. p. 68.

[fol. 226] Volume of 124 affidavits, containing affidavits of county tax assessors, members of county boards of equalization, and citizens, showing ratio of assessed values to actual values of property throughout the state. (Exhibits 14, 15, 16 to Bill of Exceptions.)

Opinion of Board of Equalization, Rec. pp. 178-181.

8

The Court erred in overruling the eighth ground of the motion for a new trial, which was as follows:

"The Court erred in sustaining the third ground of defendant's motion to dismiss the petition herein, which is as follows:

"The petition fails to allege and the certified record fails to show any discrimination as between the assessment of

petitioner's railroad property and other railroad properties or public utilities amounting to an intentional violation of the essential principle of practical uniformity.'

"This ground of the motion charges that the petition and the certified record failed to show any discrimination between the assessment of petitioner's property and the assessment of the property of other railroads and public utilities, etc. The motion implies and is grounded upon a theory that the property of railroads and public utilities may be constitutionally assessed for ad valorem taxation at a higher rate than the rate at which other property is assessed, and that the principle of uniformity is satisfied in Tennessee if the property of railroad companies and public utilities is assessed on the basis of actual value, while other property is assessed on the basis of a percentage of value less than actual value. Article 2, section 28, of the Constitution requires that all property shall be taxed according to its value 'so that taxes shall be equal and uniform throughout the state' and that 'no one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value.' It is a violation of this constitutional provision to assess the property of railroad corporations and public utilities upon a different and higher ratio of ascertained value than is employed in the assessment of other property, and it is immaterial that the petition fails to allege discrimination against petitioner in favor of other corporations whose property is assessed by the Railroad and Public Utilities Commission."

Motion to Dismiss Petition, Rec. p. 86.

Motion for New Trial, Rec. pp. 129-130.

[fol. 228] Opinion and Judgment of Court, Rec. pp. 91, 117, 121.

(Note: The opinion of the Circuit Court, filed on the motion for a new trial, specifically ruled that the Board of Equalization was without authority to "classify" property for assessment of taxation. Rec. pp. 140-141. Petitioner assumes therefore that failure to sustain this ground of the motion was an inadvertence.)

The Court erred in overruling the ninth ground of the motion for a new trial, which was as follows:

“The Court erred in sustaining the fourth ground of defendants’ motion to dismiss the petition herein which is as follows:

“ ‘The certification of the record as brought to this Court conclusively shows that all of the evidence introduced, heard or considered by the Railroad & Public Utilities Commission and the State Board of Equalization is contained in the record and upon the entire record the real question presented is a question of opinion as to valuation which is not subject to review by the courts, there being an absence of any showing that the Railroad & Public Utilities Commission [fol. 229] and the State Board of Equalization exceeded their jurisdiction, acted illegally, or acted fraudulently.’

“This ground of the motion to dismiss charges, that, in seeking to avoid the assessment of petitioner’s property on the ground that the value placed upon it is substantially in excess of its actual value, petitioner seeks to have the Court substitute its opinion as to value for that of the assessing Commission and Board. This is not a correct statement of the averments and prayer of the petition.

“The petition shows that the means or method employed to assess petitioner’s property in Tennessee for ad valorem taxation was first to place a value upon the entire railroad system located in the four States of Tennessee, Alabama, Georgia and Kentucky, a portion of which system value was assigned and allocated to Tennessee by a method elsewhere criticized and attacked as arbitrary and illegal in the petition and in this motion for a new trial. Under this method, obviously, the finding of the value of petitioner’s property in Tennessee is directly affected by the value of the entire system as found by the Commission. The petition charges, in section VII thereof, that the Railroad and Public Utilities Commission fixed the value of the system property at [fol. 230] an arbitrary amount ‘which is not supported nor sustained by any evidence submitted to or properly considered by said Commission.’ The petition then averred that the true value of the system property, arrived at by the capitalization of earnings, is only about half the value found

by the Commission, and charged that the Commission had repudiated earning power as a measure of value and had arrived at an arbitrary value by means and methods which it had not disclosed and which are not deducible from the assessment made and published. The petition charged that the Commission's finding of value was supported by no evidence submitted to or properly considered by the Commission and was therefore arbitrary and unreasonable, and therefore illegal, depriving petitioner of its constitutional rights invoked in the petition. By these averments the judgment of the Court was invoked, not to find value or fix the amount of the assessment, but to find and adjudge that the valuation made by the Commission was so far in excess of any value shown by the evidence as to be an arbitrary and therefore illegal finding. The evidence sustains the averments of the petition, and this ground of the motion to dismiss should have been overruled."

Motion to Dismiss, Rec. p. 86.

Motion for New Trial, Rec. pp. 130-132.

Judgment, Rec. p. 91.

[fol. 231] The court erred in overruling the tenth ground of the motion for a new trial, which was as follows:

"The Court erred in sustaining the fifth ground of defendant's motion to dismiss the petition herein which is as follows:

"The certified record before this Court is wholly insufficient to show any intentional, arbitrary and systematic undervaluation by State officials of other taxable property in the same class as petitioner's, but on the contrary, shows that all assessments for ad valorem taxation are reviewed by one and the same State Board of Equalization; and said Board is assumed to have acted lawfully and in good faith in an absence of any showing to the contrary."

"This ground of the motion should have been overruled because it fails to controvert the averments of the petition and the undisputed evidence that the assessment of petitioner's property in Tennessee was made according to the Commission's finding of its actual value while the property of other taxpayers, assessed by local state and county assessors, was assessed for the same taxation at values less than the actual value found by the assessors, such under-

assessment of other property having been the result of [fol. 232] wilful, voluntary, systematic and long-continued custom and practice on the part of such local assessors."

Motion to Dismiss, Rec. p. 86.

Motion for New Trial, Rec. p. 132.

Judgment, Rec. p. 91.

11

The Court erred in overruling the eleventh ground of the motion for a new trial, which was as follows:

"The Court erred in sustaining the ninth ground of defendant's motion to dismiss the petition herein, which is as follows:—

"The assessment complained of by the railroad made by the Public Utilities Commission and confirmed by the Board of Equalization was, as shown by the transcript, computed according to the statute, not beyond their jurisdiction nor did they act illegally or fraudulently, and this action is final and conclusive and is not subject to review by this Court, a court of law,—particularly by writs of certiorari and supersedeas."

"This ground of the motion is predicated upon the assumption that the petition and certified record failed to show [fol. 233] that the assessment under review was the result of arbitrary and illegal action on the part of the assessing Commission and Board. This ground of the motion should have been overruled because, as particularly pointed out in the first nine grounds of this motion, the said assessment was the result of many and particular arbitrary and illegal actions and rulings on the part of said Commission and Board."

Motion to Dismiss, Rec. p. 88.

Motion for New Trial, Rec. p. 133.

12

The Court erred in overruling the twelfth ground of the motion for a new trial, which was as follows:

"The Court erred in sustaining the tenth ground of defendants' amended motion to dismiss the petition herein, which is as follows:

“The petitioning railroad has not filed statements and information required by Section 1509 and Section 1511 of the Code of Tennessee of 1932, particularly statements of the value of its franchise, and therefore cannot be permitted by this court in opposition to the valuation fixed upon its property by the Railroad and Public Utilities Commission, as provided in Section 1521 of the Code of 1932.”

[fol. 234] “There is no basis nor support on the record for this ground of the motion to dismiss. Section 1521 of the Code prescribes a penalty upon a railroad or public utilities for refusing or failing to file schedules and statements called for by the Commission. Such schedules and statements were filed by petitioner in this proceeding, and no complaint was ever made that they were not a full compliance with the order of the Commission, until the motion to dismiss was filed in this Court. The motion is based upon petitioner’s answer to Question 9, on page 17, of the tax return, included in the certified record in this Court, wherein petitioner showed some confusion as to what was called for, referring to the statutes as failing to give a formula for determining the value of franchise. In the original assessment made by the Railroad and Public Utilities Commission, reference to this question and answer was made, the Commission stating that petitioner had failed or refused to give the value of its franchise ‘claiming that there was no known rule or method by which its value could be determined.’ The Supreme Court of Tennessee has defined franchise value thus:

“The franchise is the right to use the bed and superstructure, its value depends solely upon their use and the benefit derived therefrom.”

[fol. 235] “Railroad v. Bate, 80 Tenn., 573, 581.

“The tax return reported the facts as to operation and earnings, insofar as called for, and no material facts were withheld.

“In support of its exceptions to the original assessment, petitioner filed elaborate proof, showing the financial result of the railway operations for twenty years preceding the date of the assessment, including all facts which petitioner conceived were either directly or indirectly material in determining the value of its franchise. This ground of the

motion to dismiss is unfair to petitioner and is wholly without support on the record."

Motion to Dismiss, Rec. pp. 88-89.

Motion for New Trial, Rec. pp. 134-135.

13

The Court erred in overruling the thirteenth ground of the motion for a new trial, which was as follows:

"The Court erred in sustaining the eleventh ground of defendant's amended motion to dismiss the petition herein, which is as follows:

[fol. 236] "Since the bringing of this suit and since the filing of defendant's original motion, the Legislature of Tennessee has enacted Chapter 7 of the Public Acts of 1939 (a certified copy of same being made an exhibit to this motion), which requires in substance that before a railroad or other utility can maintain a tax suit of this nature it is required to pay the taxes due and owing the State of Tennessee, the counties and municipalities, upon the full value of their assessment. Until such payment is made, petitioners have no standing in court and their petition should be dismissed."

"The statute invoked by this ground of the motion to dismiss, Chapter 7 of the Public Acts of the General Assembly of Tennessee of 1939, was enacted January 26, 1939, after the institution of the suit, and after the original motion to dismiss had been filed. The statute has no application to the present suit because, not purporting to have retroactive effect, it is presumed to have been enacted in contemplation of Section 12 of the Code of Tennessee which provides that 'The repeal of a statute does not affect any right which accrued * * * nor any proceeding commenced under or by virtue of the statute repealed.' It has no application to the present suit because it purports to [fol. 237] apply only to assessments 'fixed and certified by the Board of Equalization,' and the assessment hereunder had not been certified at the time the petition was filed, and its subsequent certification has been prevented by order of this Court. The statute can have no application to this proceeding because to give it the application contended for would impair and defeat petitioner's constitutional right to

review the assessment by the common law writ of certiorari, guaranteed by Article 6, section 10 of the Constitution of Tennessee. The statute can have no application to this proceeding for the further reason that it is unconstitutional and void as in violation of Article 2, section 17, of the Constitution of Tennessee, in that the subject is not expressed in its caption, and the subject is not germane to the subject of the code section of which it purports to be an amendment. The statute can have no application to this proceeding for the further reason that it is unconstitutional and void as in violation of Article 1, section 8, and Article 11, section 8, of the Constitution of Tennessee, and of the Fourteenth Amendment to the Constitution of the United States, in that the said statute makes an arbitrary, capricious and unreasonable classification between railroads and public utilities, of which the petitioner is one, and all other taxpayers."

[fol. 238] Motion to Dismiss, Rec. p. 89.

Motion for New Trial, Rec. pp. 135-137.

[fol. 238a]. IN SUPREME COURT OF TENNESSEE

ASSIGNMENTS OF ERROR ON BEHALF OF DEFENDANTS STATE
BOARD OF EQUALIZATION

I

That the Court erred in failing to sustain Ground No. I of defendants' original motion to dismiss the petition for certiorari and discharge the supersedeas, said ground being as follows:

"Plaintiff's petition seeks to review the assessment of the Nashville, Chattanooga & St. Louis Railway's property in the State of Tennessee, which has heretofore been lawfully assessed by the Railroad & Public Utilities Commission of Tennessee as required by statute and which assessment was appealed to and duly heard, considered and acted upon by the State Board of Equalization, all as shown in the petition, and upon the entire record certified to this Court.

"There being no showing upon the record certified to this Court that either the Railroad & Public Utilities Commis-

sion or the State Board of Equalization exceeded their jurisdiction, acted illegally or acted fraudulently, the action of said State Board of Equalization is final and conclusive and not subject to review by the courts."

[fol. 238b]

II

That the Court erred in failing to sustain Ground No. II of defendants' original motion to dismiss the petition for certiorari and discharge the supersedeas, said ground being as follows:

"The petition fails to allege and the certified record fails to show any discrimination, inequality or lack of uniformity in the assessment of petitioner's railroad property by the Railroad & Public Utilities Commission, and the assessment of any other similar species of property, as said Railroad & Public Utilities Commission is required by law to assess, to wit, other railroad companies, telephones, telegraphs, sleeping cars, freight cars, street cars, power companies, pipe lines, electric light companies, etc."

III

That the Court erred in failing to sustain Ground No. VI of defendants' original motion to dismiss the petition for certiorari and discharge the supersedeas, said ground being in the following language:

"The valuation of petitioner's property as fixed by the Interstate Commerce Commission and as shown in the record certified to this Court, vastly exceeds the assessment made upon petitioner's property by the Railroad & Public [fol. 238c] Utilities Commission and fixed by the State Board of Equalization."

IV

That the Court erred in failing to sustain Ground No. VII of defendants' original motion to dismiss the petition for certiorari and discharge the supersedeas. Said ground appears in the following language:

"The certified record fails to sufficiently show any discrimination as between the assessment of petitioner's railroad property and any and all other property in the State of Tennessee assessed for *ad valorem* taxation, which would

amount to an intentional violation of the essential principle of practical uniformity and which would constitute something more than the usual and honest diversity of opinion as to actual cash value as entertained by the numerous tax assessors in the various counties of the State."

V

That the Court erred in failing to hold that Chapter 7 of the Public Acts of 1939 was a valid and constitutional enactment and that plaintiff in error was amenable to the [fol. 238d] provisions of said statute.

By reason of the fact that the assignments of error presented by plaintiff in error and the assignments of error presented by the defendants must all be weighed in the light of three well-defined groups of authorities, we will next pass on to a consideration of same and reply to the brief and argument of plaintiff in error.

[fol. 239] IN SUPREME COURT OF TENNESSEE

Davidson Law Docket

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

v.

GORDON BROWNING et al (State Board of Equalization)

STAY ORDER—July 1, 1939

Upon motion of the petitioner the Nashville, Chattanooga & St. Louis Railway, it is ordered and adjudged by the Court that the writ of supersedeas issued by the Circuit Court of Davidson County on December 9, 1938, upon the filing of the original petition, shall remain in full force and effect until the hearing of the appeals in the nature of writs of error prosecuted by the petitioner and the defendants; and it appearing to the Court that this case was docketed on June 28, 1939, and there not being time to hear the case prior to the summer recess, it is ordered that the hearing of said appeals be transferred to the September term at Knoxville, and that the hearing be set for October 2, 1939.

[fol. 240] [File endorsement omitted]

IN SUPREME COURT OF TENNESSEE

[Title omitted]

ORDER SUBSTITUTING PARTY DEFENDANT—Filed October 1,
1939

It appearing to the Court that the Defendant, Estes Kefauver, was duly made defendant to this action in the Circuit Court of Davidson County Tennessee, in his capacity as Commissioner of Finance and Taxation of the State of Tennessee and as member of the State Board of Equalization of Tennessee, and that the said Estes Kefauver has been succeeded in office by George W. McCanless so that he is no longer a proper defendant, it is now ordered and adjudged, the attorneys for the parties agreeing thereto, that the said George W. McCanless, as Commissioner of Finance and Taxation and as a member of the State Board of Equalization of the State of Tennessee be and he here is substituted as a party defendant in the place and stead of the said Estes Kefauver; and the parties agreeing thereto, it is further ordered that no additional process on the said George W. McCanless need be issued or served.

Signed October 5, 1939.

[Signatures illegible.]

Approved for entry.

Wm. H. Swiggart, for Petitioner. W. M. Barry,
Assistant Attorney General, for Defendants.

[fol. 241] IN SUPREME COURT OF TENNESSEE

Davidson Law. Affirmed

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

VS.

GORDON BROWNING et al.

JUDGMENT—December 16, 1939

This cause coming on to be heard upon a transcript of the record from the Circuit Court of Davidson County, as-

signments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in judgment of the Court below there is no error.

It is therefore ordered and adjudged by the Court that the judgment of the Court below be in all things affirmed and that the petition for certiorari be dismissed, the temporary restraining order heretofore issued be discharged and that the N. C. & St. L. Ry. Co. principal and Wm. H. Swiggart, Jr. surety, will pay all of the costs of this cause for which let fi fa issue.

[fol. 242]

[File endorsement omitted]

IN SUPREME COURT OF TENNESSEE.

Davidson Law

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, Plaintiff in Error

vs.

GORDON BROWNING, ET AL. (State Board of Equalization), Defendants in Error

OPINION—Filed December 16, 1939

The Nashville, Chattanooga & St. Louis Railway filed a petition for certiorari and supersedeas in the Circuit Court of Davidson County to review the action of the State Board of Equalization in fixing the value of petitioner's property for taxation. The trial judge dismissed the petition and an appeal has been taken to this court.

The Railroad and Public Utilities Commission is directed by statute (Code 1508) to assess for taxation, for state, county and municipal purposes, all of the property of every description, tangible and intangible, within the state, belonging to railroad companies and other named public utilities. It is provided that the Commission shall assess all of such property biennially, in even years, at its actual cash value as of the same date the properties of other persons are by law assessed. The owners of property assessable under the statute are required by Code 1509 to file with the Commission sworn schedules and statements of certain information.

Section 1526 of the Code is as follows:

“Upon examination of every such schedule and statement and all other evidence taken by them, the said commission shall proceed to ascertain and determine the value of said property within the state for taxation and assess the same accordingly, taking into consideration the capital stock, corporate property, franchises, and gross receipts, the market value of the shares of stock and bonded indebtedness, and such other evidence as is afforded by said statements and schedules or other evidence taken to enable them to fairly and equitably fix the actual cash value of the properties of such persons.”

The railway filed its return with the Commission, and after considering the same, together with other evidence, the Board fixed the cash value of the railway's property in Tennessee, for taxation, at \$16,223,199.00, for the biennium 1938-39. The railway filed numerous exceptions to the assessment, which were denied after a full hearing, and the railway prayed and was granted an appeal to the State Board of Equalization. The statute (Code 1533) provides that the Commission shall file with the Board the assessments made by them, together with such records as may be deemed necessary. Section 1534 provides that the Board shall proceed to examine the assessments so made, and are authorized to increase or diminish the valuation placed upon any property valued by the Commission, and are further authorized to request of the Commission additional evidence touching the property assessed; that if the Board so desire, they have the power, without referring any assessment to the Commission, themselves to employ experts, accountants, and to call witnesses to testify upon any assessment certified to them by the Commission, and to call upon the Interstate Commerce Commission for any valuation of property in the office of such Commission; that the [fol. 244] assessments shall not be deemed complete until corrected and approved by the Board. Under Code section 1535, the Board is required to certify to the Commission the valuation fixed by them upon each property assessed, and the action of the Board “in fixing the valuation upon such property shall be conclusive and final and the valuation so fixed shall be assessed against said property and the taxes due thereunder be paid.”

The Board reviewed the assessment of the railway's property and approved the same. Before the Board certified back to the Commission the amount of the assessment, as approved, the railway filed its petition for writs of certiorari and supersedeas in the Circuit Court of Davidson County. The circuit judge, upon motion of the Board, taking into consideration the entire record as certified to the circuit court by the Board, dismissed the petition and discharged the supersedeas. From this action of the circuit judge, the railway has appealed to this court and made numerous assignments of error. The railway in the presentation of its case, has not followed serialim the assignments of error. As a matter of convenience we will follow the same course.

The railway complains, in the argument contained in its brief, that "The assessment is not supported by any evidence; is grossly in excess of the value of the property as established by the evidence; was made by methods not calculated to produce a fair and just result and therefore arbitrary and illegal; and was made in violation of the provisions of the statutes controlling the assessment of railroad property."

The assessment made by the Board is made final and conclusive by statute (Code 1535) and is not open to review [fol. 245] by the courts on certiorari, where the Board has not with reference to the assessment, exceeded its jurisdiction or acted illegally or fraudulently. *Tomlinson vs. Board of Equalization*, 88 Tenn., 1, 12 S. W. 414, 6 L. R. A. 207; *Anderson vs. Memphis*, 167 Tenn., 648; *Treadwell Realty Co. vs. City of Memphis*, 173 Tenn., 168, 116 S. W. (2d.) 997. In *Savage vs. City of Knoxville*, 167 Tenn., 642, it was held that value placed on property for taxation by duly constituted taxing authorities is not reviewable by the court, nothing else appearing, since value is a matter of opinion. In *Mossy Creek Bank vs. Jefferson County*, 153 Tenn., 332, 284 S. W. 64, it was held that mere error in honest judgment of a county board of equalization as to value of property will not obviate binding effort of conclusion, in absence of fraud. The rule announced by the above cases is no longer open to doubt or discussion. Where, however, the Board acts illegally, fraudulently or in excess of its jurisdiction, certiorari is the proper remedy. *State, ex rel. vs. Dixie Portland Cement Co.*, 151 Tenn., 53, 58; *Railroad vs. Bate*, 80 Tenn., 573.

The provision of the statute that the valuation made by the Board "shall be conclusive and final" presupposes a substantial compliance with the proceedings prescribed with reference to the method of making valuation of railroad property.

The Commission, as affirmatively appears from the itemized assessment made by them, considered all of the elements specified in the statutes (Code 1526). The Commission had [fol. 246] before it the return of the railway and other evidence submitted and fixed the value of the railway's property in the sum above stated. No witness, or document in evidence, fixed the exact value as reported by the Commission; but from the facts developed, the Commission held itself able to fairly and equitably fix the actual cash value of the property. No intentional discrimination or fraud on the part of the Commission or Board is charged or proven. In *Rowley vs. Chicago & N. W. R. Co.*, 293 U. W., 102, 79 L. Ed. 222, the court said:

"There is nothing in this record to suggest any lack of good faith on the part of the board. Overvaluation resulting from error of judgment will not support a claim of discrimination. There must be something that amounts to an intention, or the equivalent of fraudulent purpose, to disregard the fundamental principle of uniformity."

In *Chicago Great Western R. Co., vs. Kendall*, 266 U. S. 94, 69 L. Ed. 183, 189, the court said:

"It is not enough, in these cases, that the taxing officials have merely made a mistake. It is not enough that the court, if its judgment were properly invoked, would reach a different conclusion as to the taxes imposed. There must be clear and affirmative showing that the difference is an intentional discrimination, and one adopted as a practice."

The rule announced in the above cases is generally recognized and needs no additional citation of authority in its support.

The good faith of the Commission and Board and the validity of their action are presumed; when assailed, the burden of proof is upon the complaining party. *Sunday Lake Iron Co. vs. Wakefield*, 247 U. S. 350, 62 L. Ed. 1154. [fol. 247] It is contended for the railway that the Commission and Board should have made the assessment on the

basis of capitalization of net income at a rate which would measure a fair return to the investor in the property, or, at least, that such method should have been made the predominant factor in arriving at the value of the property. Capitalization of net income is not specified in section 1526 of the Code; but this factor could have been considered along with other elements in fixing the value of the property. Incorporated in the assessment made by the Commission under the caption "Earnings" is a tabulated statement of net operating income for the years 1933-1938. A statement filed by the railway showed net operating revenue for the years 1931-1937 averaged \$947,530.60 per annum, and that the net revenue from non-operating property for the seven year period averaged \$13,747.28, making a total average net operating revenue of \$961,277.88. The insistence is that if this average net revenue be capitalized at 6%, a value of \$16,021,298 is shown for the entire system as compared with the \$23,996,604.14 fixed in the assessment. The statement of average income was considered by the Commission, as is shown by the following statement of one of the Commissioners made on the argument before them, " . . . to see what the trend was, whether the trend was upward or downward with the company, as justification for reducing or raising the assessment, so that was largely the purpose of having that in the brief, was what I thought." Greater weight was given to the most recent figures "to judge present day conditions."

We are unable to agree that the Commission, or the Board, was under any legal compulsion to make the assessment on the basis of capitalization of net income, or to make net income a predominant factor in arriving at the [fol. 248] value of the property. A railroad is to be assessed according to its value as a railway, by taking into consideration the elements specified in Code section 1526, which includes "other evidence taken to enable them to fairly and equitably fix the actual cash value of the properties." Counsel for the railway refers to *Railroad vs. State*, 55 Tenn., 798, as approving decisions holding that "a tax can only be just and equal on railroad corporations by being assessed upon the profits." The court did not approve this as an exclusive method of ascertaining value; on the contrary, the court said, "We can conceive of no better criterion by which its value can be ascertained, than, first,

"the value of the structure, superstructure and properties, and then the profits which may enure to its owners in its operation." The court further stated, "A tax on a corporation may be proportioned to the income-revenue, as well as to the franchise granted, or the property assessed," citing *Minot, Jr., vs. Railroad*, 18 Wall., 206 (21 L. Ed. 888). *Railroad vs. State*, *supra*, was decided prior to the enactment of the first railroad assessment law in 1875.

In *Great Northern Ry. Co. vs. Okanogan County*, 223 Fed., 198, it is said:

"The value of a completed railroad is not easy of ascertainment. Railroads are not usually bought and sold on the open market. Their value is in use, rather than in exchange, and many elements go to make up that value. The cost of construction or reproducing, the income, the earning capacity, the value of stock and bonds, have all been taken into consideration by the courts. None of these elements are controlling, however."

A like statement to the above is to be found in 26 R. C. L., 189.

It is complained by the railway that the apportionment [fol. 249] of distributable property to Tennessee on mileage basis is invalid. The Commission found the railway's distributable property in Tennessee to be the average value per mile of the system distributable property multiplied by the number of miles of main track in Tennessee. On the basis of a total mileage in the system of 1,115.34, of which 800.02 miles is in Tennessee, and the total entire value of distributable property to be \$18,022,133.14, the Commission assigned to Tennessee for taxation a value of \$12,926,944. It is contended by the railway that this method of allocation is contrary to statute (Code 1526) and has the effect of imparting into Tennessee for taxation values located in other states, contrary to Article 1, section 8, and Article 2, section 28, of the Constitution of Tennessee, and the due process clause of the Fourteenth Amendment to the Constitution of the United States. It is further contended that the value of the entire property (\$23,996,604.14) "is in substantial excess of any reasonable opinion or estimate of value supported by or deducible from any evidence upon which such assessment was made, and which finding of value is not supported by or based upon any evidence in

the record upon which the assessment was made, all of the evidence showing that the actual value is not in excess of \$16,021,298." This is a renewal of the contention that the value of the property should have been fixed on the basis of capitalization of net revenue of the system, and not upon the basis adopted by the Commission.

In *Railroad vs. State*, supra, at page 797, the court said, "If it be an interstate railroad, as in this case—a part in this State and a part in another—we know of no better plan to fix the taxable value of that portion lying in this State, than to ascertain what proportion the latter bears [fol. 250] to the whole. upon this subject, however, there is great conflict of authority, and great contrariety of judicial reasoning and ruling."

In *Franklin County vs. Railroad*, 80 Tenn., 521, 540, the court said:

"No part of the mere roadway can be said to be more valuable than any other part, when considered as a track for the exercise of the franchises of the company as a common carrier. It is, like the franchise itself, a unit for the purposes intended, these purposes being not merely the use of the road for the profit of the company, but its use for the benefit of the public. Any interruption of that use is a public as well as a private calamity. 'It may well be doubted,' says the Supreme Court of the United States, 'whether any better mode of determining the value of that portion of the track within any one county has been devised than to ascertain the value of the whole road, and apportion the value within the county by its relative length to the whole.' *State-Railroad Tax Cases*, 92 U. S., 608."

In *Pittsburg, C. C. & St. L. R. Co. vs. Backus*, 154 U. S. 421, 38 L. Ed. 1031, the court quoted with approval the above paragraph taken from *Franklin County vs. Railroad*, and held, that the value of one part of a single continuous line of railroad is fairly estimated by taking the part of the value of the entire road which is measured by the proportion of the length of the particular part to that of the whole road, unless accompanied with proof that portions of the road outside of the state were of largely greater value than any similar length of road within the state. In *Cleveland, C. C. & St. L. R. Co. vs. Backus*, 154 U. S., 439, 38 L. Ed. 1041, that in assessing a part of a railroad within

a state, the other part of which is in an adjoining state, when the assessing board ascertains the value of the whole line as a single property, and then determines the value of that within the state, upon the mileage basis, that is not a [fol. 251] valuation of property outside the state, if no special circumstances exist to distinguish the conditions in the two states, such as terminal facilities of enormous value in one and not in another.

The record in the instant case does not disclose that the portions of the railroad outside Tennessee are largely of greater value than the portion within the State, or that any special circumstances exist to show a greater value outside the State than within the State. The railway contends, however, that by breaking down the whole net revenue so as to show the portion thereof earned within the State as compared to that earned out of the State a greater value is shown to exist out of the State. The railroad was valued as a whole by the Commission. All of the elements set forth in Code, section 1526 were considered. Under the well established rule for assessment on a mileage basis, no exceptional facts appearing, the portion of the railroad in Tennessee could not be treated as an independent line, disconnected from the part without the State. Furthermore, the exception to the rule contemplates, we think, that it be clearly shown that the portion of the road out of the State has a greater value than the part within the State, such as terminal facilities or other improvements not found within the State.

Our conclusion on the question of allocation is that the assessment did not violate any of the railway's rights under the State Constitution, nor under the Fourteenth Amendment to the Federal Constitution.

Another complaint made by the railway is that the Commission and Board assessed its property at actual value, while the property of all other taxpayers was assessed at two-thirds of its actual value. A large number of affidavits [fol. 252] made by local assessors were filed with the Commission to the general effect that affiants intentionally and systematically assessed other property for taxation at an amount not exceeding 75% of its value. Affidavits from others to like effect were also filed.

County assessors are required by law to assess property at its actual cash value (Code 1349). And they take an

oath of office that they will assess all property at its actual cash value (Code 1343). They must make oath to the assessment lists, which contains the statement that they have assessed all property at its actual cash value (Code 1375).

The assessment lists are returned to the county court clerk.

The assessments as made by the county assessors are not final. On the contrary, the assessment lists are required to be delivered by the county court clerk to the county board of equalizers (Code 1424). Under Code 1426, the duties and powers of the board are defined: It is made their duty "to carefully examine, compare, and equalize the county assessments." It is further provided therein that, "Said board shall have the power, and it is hereby made its duty, to increase or lower the entire assessment roll or any assessment contained therein, so as to equalize the assessment of all property contained therein, and make such assessment conform to the actual cash value of the property described in the assessment. If the property described in said assessment lists or any part thereof shall have been assessed at less than the actual cash value thereof, the value of the same shall be increased so as to conform to the actual cash value thereof, * * *." (Italics ours.)

Under Code, 1434, the county board upon returning the assessment roll to the clerk are required to append to the [fol. 253] same a verification, signed by each member, that they have equalized and fixed the value of all property at the actual cash value thereof.

Under Code 1440, it is made unlawful for board to equalize at less than actual cash value. It is made the duty of the county board of equalizers to transmit to the State Board of Equalization a summary of the assessment as completed by it.

The State Board of Equalization is directed to meet at places throughout the State, selected by them. (Code 1448.) And it is provided in section 1456 that the Board "shall have jurisdiction of, and it shall be its duty, to equalize during its session the assessments of all properties in the state" and its action "shall be final and conclusive as to all matters passed upon, * * * subject to judicial review." (Italics ours.)

If the county assessors and the few members of county boards of equalizers making affidavits on the hearing before the Commission assessed property at less than actual value, and did so intentionally and systematically, there is no

showing whatever that the members of the State Board of Equalization violated their oath of office by underassessing property. In the absence of a contrary showing, it must be assumed that the State Board did their duty. There is neither allegation nor proof that the State Board intentionally and systematically refused to equalize assessments at actual value. The good faith of such officers and the validity of their actions are presumed. *Sunday Lake Iron [fol. 254] Co. vs. Wakefield*, 247 U. S., 350, 62 L. Ed. 1154. In order to support a claim of discrimination under the equal protection clause of the Fourteenth Amendment there must be something that amounts to an intention or the equivalent of fraudulent purpose to disregard the fundamental principle of uniformity.

Another complaint made by the railway is that the Commission and Board included in the assessment interest bearing securities and corporate stocks to the value of \$2,484,000, not subject to taxation. The assessment shows on its face that the value of the railroad was fixed, "making due allowance for all non-taxable securities held." The securities were considered by the Commission merely as reflecting on the present financial condition of the railway.

It is complained that the Commission included 3.65 miles of railroad, known as the "West Nashville Branch", as main track mileage in computing the value of the railway's distributable property. It is asserted that all of the evidence shows this line to be side tracks. The railway's own return shows this 3.65 miles to be main track.

From our examination of the record we are satisfied that the assessment made on the property of the railway was fair and equitable. There is nothing to support the contention that the assessment was discriminatory or arbitrary.

The record shows (ex. 19) that the property of the railway, in Tennessee, was valued for taxation in former and 1938-1939 years as follows:

[fol. 255] "1923-1924	-24,000,000
1925-1926	24,795,303
1927-1928	24,795,303
1929-1930	26,000,000
1931	23,750,000
1932-1933	17,000,000
1934-1935	16,999,966
1936-1937	16,499,998
1938-1939	16,223,194"

The former valuations were not made the basis for the 1938-1939 assessment; but they may be looked to as the argument that the railway's property had declined in value.

The Board in its opinion stated, "It will be seen, that the assessment made for the year 1938-1939, is a substantial reduction from the high of 1929-1930, indeed, a reduction in the sum of \$9,776,806.00. We are convinced that this reduction of companies assessment from the high point in recent years, is comparable with the reduction enjoyed by owners of other property, or any class of property, within the bounds of this State."

It is argued that property generally, throughout the state, is assessed for taxation at less than cash value, and that the court should take judicial knowledge of such under-assessment. Whatever may have been the practice in this regard in former times, it is our belief that since 1930 assessments generally are and have been higher than the actual cash value of the property assessed.

It is argued that the Commission "arbitrarily assessed the railway's distributable property at the valuation placed upon it for the preceding biennium, notwithstanding the abandonment of 38 miles of Tennessee main track which the [fol. 256] Commission had in said previous assessment included at a valuation of \$15,407.93 per mile, aggregating \$587,500." The argument seems to be that the Commission and Board should have deducted from the assessment the sum of \$587,500 representing the value alleged to have been placed on 38 miles of main track in the assessment of 1936-1937, and asserted to have been thereafter abandoned. The railway returned 800.2 miles of main track for the 1938-1939 assessment and that is the mileage assessed. The 38 miles was not included in the return or the assessment. In considering the various factors and elements going to make up the distributable value of the properties for 1938-1939, the Commission and Board found the total value thereof (excluding the 38 miles above mentioned) to be \$12,926,944, which assessment it is asserted is the same as 1938-1939. The total assessment for 1938-1939 was \$276,804 less than for the previous biennium. The valuation for assessment of the 800.2 miles of main track returned by the railway for assessment fixed by the Board, under the statute and authorities hereinbefore cited, cannot be reviewed by this court, the Board not having exceeded its jurisdiction or acted illegally.

The opinion of the Board contains the following:

"This appeal presents to the Board a difficult problem. Each member is ex officio. Therefore, adequate time is not ours to give the necessary investigation to entirely satisfy even ourselves, that we may reach an equitable conclusion. However the responsibility is ours and we would not shirk it."

It is contended that this statement shows that the Board made the assessment, or approved the assessment without making necessary investigation. The opinion specifically [Vol. 257] refers to the railway's exceptions and there is nothing to show that they were not given consideration. While not dealt with seriatim in the opinion, the conclusion reached was that the assessment made should stand. Various additional affidavits, charts and maps were introduced by the railway before the Board and there is nothing to show that these were not considered by the Board. On the contrary the record shows that the exceptions were fully argued before the Board and the able counsel for the railway and the Board acquainted the Board with all the pertinent facts and with their respective contentions. The assessment as made by the Commission, together with the whole record as made up before it, was filed with the Board, as required by Code 1535. The Board "proceeded to examine the assessment so made," as required by Code 1534. It received additional evidence from the railway. It is mere empty assertion to say that the Board did not give proper or sufficient consideration to the cause. To upset the decision of this quasi court because of the expression set out above, which was immediately followed by the language, "however, the responsibility is ours and we would not shirk it," when there had been a full hearing on the exceptions, would be wholly unwarranted, especially when on a full hearing by the Board it was found that the exceptions were without merit, and subsequently so found, in effect, by the circuit judge.

After due consideration, we find all of the assignments of error to be without merit. The result is that the judgment of the trial court is affirmed. The railway will pay the costs of the appeal.

De Haven, Judge.

Cook, J., and Kennerly, Sp. J., Concur; McKinney, J., and Chambliss, J., Dissent.

[fol. 258]

[File endorsement omitted]

IN SUPREME COURT OF TENNESSEE

[Title omitted]

DISSENTING OPINION—Filed December 16, 1939

I am of the opinion that the State Board of Equalization has not complied with the law, and for that reason the case should be remanded to that body in order that it may find the assessable value of the Railway property.

The State Board of Equalization, as I see the matter, has proceeded upon the theory that it is an appellate board to review and correct the errors committed by the Railroad and Public Utilities Commission when, according to my interpretation of the law, it is the final tribunal for fixing the value of the Railway property, and the report of the Commission is only advisory and informative. The Commission assesses the property and then certifies same to the State Board of Equalization for its final determination as to its cash value.

Under the law it is made the duty of the Railway to file a [fol. 259] sworn schedule on the first day of April biennially, in the even years, giving the Commission the information set forth in Section 1509 of the Code. Other pertinent statutes are as follows:

1526. "Upon examination of every such schedule and statement and other evidence taken by them, the said commission shall proceed to ascertain and determine the value of said property within the state for taxation and assess the same accordingly, taking into consideration the capital stock, corporate property, franchises, and gross receipts, the market value of the shares of stock and bonded indebtedness, and such other evidence as is afforded by said statements and schedules or other evidence taken to enable them to fairly and equitably fix the actual cash value of the properties of such persons."

1533. "Said assessments shall be completed on or before the first Monday in August, and within ten days from the first Monday in August, the owner of any property assessed may appear and file exceptions to said assessment, together with such evidence as they may desire to submit as to the value of the property assessed, and at the expiration of

said ten days, said commission shall reassemble and examine such additional evidence and exceptions as may have been filed, and act thereon; either changing or affirming their valuation. And on or before the first Monday in September, said commission shall file with the board of equalization the assessments made by them, together with such records as [fol. 260] may be deemed necessary."

1534. "The state board of equalization shall proceed to examine said assessments so made by the commission, and they are authorized to increase or diminish the valuation placed upon any property valued by said commission, and are further authorized to require of said commission any additional evidence touching one or more of the properties assessed, and shall consider such additional evidence so furnished in fixing the correct value of any property so assessed, and said assessments shall not be deemed complete until corrected and approved by the said board of equalization; and the governor is authorized to call said commission at any time to perform the duties imposed upon them; provided, however, that if said board of equalization shall so desire, they shall have the power without referring any assessment to said commission, themselves to employ experts, accountants, and to call witness to testify upon any assessment certified to them by said railroad commission; and said board of equalization shall have the same powers to compel attendance of witnesses, production of books, papers, and documentary evidence as is by this statute given to said commission. Said board of equalization shall have the right to call upon the interstate commerce commission for any valuations of property in the office of the interstate commerce commission and evidence in possession of said commission in support of such valuations..

[fol. 261] "All of the evidence thus acquired by said board of equalization shall be considered by them in addition to the evidence transmitted to said board by said commission in support of the assessment so fixed by said commission.

"Any expense incurred by said board in calling for the additional proof as to the value of any property certified to them by said commission shall be by said board of equalization certified to the state comptroller and paid by him out of any moneys in the treasury not otherwise appropriated."

1535. "On or before the third Monday in October, said board of equalization shall certify to the commission the

valuation fixed by it upon each property assessed under this law, and the action of the board of equalization in fixing the valuation upon such property shall be conclusive and final and the valuation so fixed shall be assessed against said property and the taxes due thereunder be paid."

From the foregoing statutes it appears that the responsibility for finally fixing the value of the Railway property is vested in the State Board of Equalization, and it cannot discharge that duty by giving the report of the Commission a perfunctory and superficial examination and consideration.

The report of the State Board of Equalization begins with [fol. 262] this statement:

"This appeal presents to the Board a difficult problem. Each member is ex officio. Therefore, adequate time is not ours to give the necessary investigation to entirely satisfy even ourselves, that we may reach an equitable conclusion."

As I construe the statutes, the assessment by the Commission does not become final until approved by the State Board of Equalization; that Board being vested with power to either increase or decrease the value placed upon the Railway property by the Commission even though there has been no appeal. The Board states very frankly that it did not have time to make the necessary investigation to enable it to reach an equitable conclusion. But the statute imposes such duty upon it, and until such investigation and consideration is made it has not complied with the law. In this connection I wish to emphasize the fact that the statute authorizes the Board "to employ experts, accountants, and to call witness to testify upon any assessment certified to them by said railroad commission." They also have the right to call upon the Interstate Commerce Commission for any valuation made by it of the involved property. The State Board of Equalization is, therefore, vested with all necessary authority, and has the facilities at its disposal to enable it to arrive at an equitable and just valuation of the Railway property.

[fol. 263] The State Board of Equalization, furthermore, seems to have been largely influenced by the 1936-1937 assessment of the Railway property, which, it states, the record shows was agreed to by the Railway. Such statement is not supported by the record; but if it was that would be no criterion of value, since the statute expressly provides the method by which such value is to be ascertained.

The Board in its report makes the following additional statement:

"It appears in the record, and it was stated in argument, that the Commission, in reaching its conclusion, looked to the capital stock, corporate property franchises and gross receipts, the market value of the shares of stock and bonded indebtedness, and all evidence as afforded by the returns, statements and schedules made by the company. We assume that their statements are true, and we understand that these elements must be used, as a matter of law, in making such assessments."

It is apparent from this statement that the Board did not consider these elements, as it was its duty to do, but proceeded upon the assumption that the Commission had considered same and had, therefore, arrived at a valuation in the manner provided in the statute.

Counsel for the State contend that there is no fixed, positive or definite formulation for the valuation of such property. We are unable to accede to this position of counsel. The Board, necessarily, is to arrive at the valuation by the method set forth in the statute for the ascertainment of its value by the Commission. It was certainly never intended that the Commission should use one formula and the Board a different one.

This is a case of great importance both to the State and the Railway, and one that the Board should fully and carefully investigate and consider. Only three of the five members composing the Board participated in the hearing and consideration of this case. While the statute provides that three members of the Board shall constitute a quorum, I am of the opinion that as a matter of policy it would be better in a case of this magnitude and importance if it were heard, investigated and considered by the entire membership of the Board in order that as full and complete justice may be arrived at as is humanly possible.

McKinney, J.

[fol. 265] [File endorsement omitted]

IN SUPREME COURT OF TENNESSEE

[Title omitted]

DISSENTING OPINION—Filed December 16, 1939

I find myself in accord with the views expressed by Mr. Justice McKinney in his dissenting opinion. Whether be-

cause of "inadequate time * * * to give the necessary investigation", as expressed in the opinion handed down by the Board of Equalization, or because of an under estimate by the members of that Board of the extent and nature of the duties which I understand the law imposes upon them in the making of railroad assessments, as distinguished from assessments of real estate generally, I am satisfied that errors appear.

I fully appreciate that the Circuit Court and this Court are restricted to the correction of errors involving excess of jurisdiction, illegality or fraud, without power to substitute our opinion as to value for that of the assessing tribunal, but no such restriction applies to the Board of Equalization. That Board sits as a quasi-Court with de novo jurisdiction, with the obligation to render judgments of appraisal of value for taxation upon an independent investigation and examination into all the evidence. It is this judgment, so arrived at and exercised independently, which is made "conclusive and final".

It seems to me quite obvious from the recitals of the brief opinion filed, that the judgment fixing the assessment in this case was not so arrived at, but was rested largely upon two matters referred to in the opinion, (1) statements, or conclusions, in the report of the Railroad Commission, which, says the opinion, "we assume * * * are true" (that is, have adopted without independent examination and verification); and (2) the record of assessments of this Railroad for previous years, set out in the opinion.

I realize the difficulty of the task which I understand the law imposes on the Board of Equalization, composed, as it is, of gentlemen whose duties incident to their several highly important offices are so exacting as to leave them little time for the discharge of their extra "ex officio" duties as members of this Board. To meet this situation, however, the legislature has expressly provided that the Board may employ their own experts and accountants and bring in evidence from various sources of different kinds, including such as may be in possession of the Interstate Commerce Commission, all in order that the Board of Equalization may fit itself to make its own finding and appraisal of values on which to base its assessments. Now it does not appear that any such course was followed, but, as already suggested, the Board assumed the correctness of the conclusions reported by the Railroad Commission and adopted them

in toto. However competent and capable the distinguished gentlemen composing the Railroad Commission are, the duty and responsibility is imposed, not upon them, but upon the Board of Equalization, of rendering a judgment, which shall be "final and conclusive", after making for itself the investigation necessary to enable it to fix for itself these values.

It was exceedingly important to the petitioner in this case that the *habeas corpus* jurisdictional powers of the Board of Equalization should be fully and carefully exercised,—that "adequate time" should be taken for "the necessary investigation" that the Board might "reach an equitable conclusion".

In addition to, and in line with the general criticism which I have felt constrained to make of the inadequacy of the examination apparently made by the Board of Equalization, in the exercise of its independent and final jurisdiction, an [fol. 268] examination of the pertinent records convinces me that several specific errors appear going to the legality of the judgment of the Board of Equalization before us for review;

1. Reference has been made to the consideration given assessments of this Railway's properties for former years. One third of the brief opinion of the Board is devoted to a comparative analysis of these former assessments which are quite apparently given predominant consideration. I find no authority for thus using assessments made in former years as a basis of value. The petition shows, and common knowledge of affairs supports, that radical and fundamental changes have taken place in the last few years in the conditions which basically affect the value of railroads, so that assessments of former years furnish today no fair controlling criteria for appraisal of this particular, and peculiar class of property. For example, what is known as the "franchise" of a railroad, formerly a highly important element of value, has today greatly less value. A franchise is a special privilege, originally granted to a subject by the Crown, now in this country by the Government. It implies profitable advantages, not enjoyed generally, or competitively. A common incident of a franchise is a degree of monopoly. The grant to railroads carries the right of eminent domain, for instance. Inherent, therefore, in the franchise of a railroad, were former advantages which

[fol. 269] yielded automatically more or less large profits, not to be generally enjoyed. Now, this is changed, and it must be conceded—all men know it—that practically all of this element of value, formerly the dominant incident of the franchise, has been wiped out, in large measure by the policies and contributions to competition of the Government itself. This competition in transportation of passengers and freight, graphically set forth in the proof in the record, has apparently not only wiped out the major elements of value of the franchise, but has diminished greatly the “use” value of the railroads as a whole, and calls for at present a thorough going investigation of basic elements of value applicable to present day conditions, which it is apparent the Board of Equalization, for reasons indicated, did not undertake, or have opportunity, to make.

2. It is complained for petitioner that the Board of Equalization refused to regard the net earnings as an important element in fixing value. Attention is called to the argument before the Board of Equalization of Mr. Hendley (expert and spokesman for the Railroad Commission) that “not once in the law do we find the word ‘net’”; that “the elements principally are the ‘gross’ receipts, the value of the stocks and bonds and the value of the corporate property”; and in commenting on the assessment made by the Railroad [fol. 270] Commission, the opinion of the Board of Equalization says that it was the “gross receipts” which were considered. While it is true that in Code Section 1526 the expression “gross receipts” is used, we think it clear that the law as a whole contemplates that the operating expenses shall be considered in the same connection, thus arriving at the “net”. The language of this section as a whole so requires, calling, as it does, for statements and schedules and other evidence as a basis for fixing the values. Also, Section 1509, setting out more specifically the information to be laid before and considered in making the assessment, expressly couples together the gross receipts and the expenses.

3. I think the record as a whole indicates that, contrary to the law applicable, certain intangibles of considerable amount, non-taxable under what is known as the Hall income tax law, have been taken into account in fixing the valuation arrived at as a whole. If this is so, then the assessment has to this extent, certainly, been illegally arrived at. The

brief opinion is silent on this question, much stressed by petitioner, but it does appear that Mr. Hendley, the official spokesman for the Railroad Commission, in presenting the case to the Board of Equalization, did specifically call attention to the fact that the Railway held these valuable assets and this item was thus plainly brought to the attention of the Board in support of the assessment figures as [fol. 271] reported by the Railroad Commission. It seems to me that it may be fairly assumed that these items were taken into account in fixing the assessment. In arguing before the Board of Equalization for its adoption of the assessment figures reported by the Railroad Commission, Mr. Hendley, above mentioned, said, "The N. C. & St. L. Railway unlike other railroads have a nice cash surplus on hand. Its financial set up is good. On January 1st of this year they had on hand cash and non-taxable Federal bonds and notes in the amount of \$3,569,801.00 to which should be added the \$140,000.00 earned since January, 1938". The inference seems plain that these elements showing the Railway's "financial set up is good" were considered in appraising the corporation's properties as a whole—otherwise why mention them? Commenting on this matter, the majority opinion says, "The securities were considered by the Commission merely as reflecting on the present financial condition of the Railway". Obviously, such consideration reflected an increased value and thus served to bolster up the assessment as a whole.

4. Reference has been made to apparent reliance on assessments of former years. It is shown that 38.96 miles of main track of petitioner's railroad, formerly assessed at \$590,292.95, had been abandoned, with the approval of the Interstate Commerce Commission. This reduced the total track mileage in Tennessee from 838.98 to 800.02 miles, yet the value fixed for assessment here is identical with that [fol. 272] made in the greater mileage for 1936, being, in both instances, \$12,926,944.00. This seems to demonstrate that the assessment for this previous year was not only considered, but adopted.

5. The evidence appears to show that 3.65 miles of track, described as West Nashville Branch, is an industrial or side track and that this trackage has been included in the assessment as returned as main track mileage.

Without further elaboration, I concur with Mr. Justice McKinney that justice demands that the case should be remanded to the Board of Equalization for a redetermination of the assessment.

Chambliss, J.

[fol. 273] IN SUPREME COURT OF TENNESSEE.

[Title omitted]

ORDER DENYING PETITION TO REHEAR—January 20, 1940

This cause coming on further to be heard upon a petition to rehear, together with answer thereto, upon consideration whereof the Court is of opinion that petition should be and it is hereby denied at the cost of petitioner, for which let *fi fa* issue.

[fol. 274] IN SUPREME COURT OF TENNESSEE

[Title omitted]

OPINION ON PETITION TO REHEAR

This cause is again before the court on the railway's petition to rehear and the reply of the State Board of Equalization thereto. The court discussed in its opinion the questions made by the railway's assignments of error and decided the same. Most of the petition to rehear is devoted to a reargument of some of these questions. One new question is sought to be raised by the petition. It is asserted that the localized property of the railway was assessed at \$3,297,250 by the Board "without knowing or inquiring how the aggregate is made up," and that the Commission "withheld from the Board "all information of its valuation of localized property items." This attack on the assessment was not specifically made by any of the assignments of error filed in this court. Rule 14 of this court provides, [fol. 275] among other things, as follows: (173 Tenn., 874.)

"Assignment of Error. The assignment of errors shall contain in the order herein stated:

(1) * * *

"(2) A statement of the errors of fact or law relied upon to reverse or modify the same, showing *specifically* wherein

the action complained of is erroneous, and how it prejudiced the rights of the appellant, or plaintiff in error, and reference to the pages of the record where the ruling of the court on matters constituting errors of law appears; and in case it is an error of fact, to the pages of the record where the testimony is to be found relied upon to sustain the same." (Italics ours.)

The railway, as before stated, did not specifically assign as error the action of the Commission and Board in assessing its localized property at \$3,297,250. The rule assumes *prima facie* the correctness of the proceedings of the inferior courts, and imposes on parties assailing them the duty of specifically pointing out the errors of which they complain. *Denton vs. Woods*, 86 Tenn., 37; *Wood vs. Frazier*, 86 Tenn., 500. A subject on which no assignment of error has been made need not be considered on appeal. *Hawkins vs. Hubbell*, 127 Tenn., 312.

The exceptions filed before the Commission did not specifically complain of the assessment on the localized property. The petition for certiorari alleged that it prayed an appeal to the Board "to the end that said exceptions might be there further considered," and it was further averred that it was notified "that its exceptions as filed with the Railroad and Public Utilities Commission, would be considered by the [fol. 276] State Board of Equalization on November 2, 1938, and said hearing was accordingly held upon the evidence and record transmitted to the Board by the Railroad and Public Utilities Commission." The railway in its petition for certiorari to the circuit court exhibited therewith its exceptions. It was not alleged in the petition for certiorari that the assessment made on the localized property was illegal or void. No such issue was specifically tendered by the petition.

This court did not hold that the examination by the Board of the assessment made by the Commission was dependent upon the railway's appeal or limited or restricted thereby. On page 2 of the opinion the substance of Code 1534 defining the duties of the Board with reference to the assessment returned by the Commission is set out. But, as shown by the record, the railway in its petition for certiorari to the circuit court did not specifically allege that the assessment of its localized property made by the Commission and approved by the Board was invalid for any reason.

The railway's motion for a new trial, filed in the circuit Court, does not contain in any of the grounds therefor any specific complaint that the trial judge held the assessment of localized property valid, or that he refused to pass upon such question.

Rule 14 (5) of this court provides that the grounds upon which a new trial is sought in this court "will not constitute a ground for reversal, and a new trial, unless it affirmatively appear that the same was specifically stated in the motion made for a new trial in the lower court, and decided [fol. 277] adversely to the plaintiff in error, but will be treated as waived, in all cases in which motions for a new trial are permitted." The following is recited in the rule:

"This is a court of appeals and errors, and its jurisdiction can only be exercised upon questions and issues tried and adjudged by inferior courts, the burden being upon the appellant, or plaintiff in error, to show the adjudication, and the error therein, of which he complains. *R. R. Co. v. Johnson*, 114 Tenn., 640; *Wood v. Frazier*, 86 Tenn., 501; *Jacks v. Williams-Robinson Lumber Co.*, 125 Tenn., 123; *Hobbs v. The State*, 121 Tenn., 413; *Tennessee Central R. R. Co. v. Brown*, 125 Tenn., 351."

For the reasons stated above, the railway cannot be heard to complain in this court of the amount of the assessment made on its localized property.

The petition to rehear contains some erroneous inferences and deductions from matters decided by the opinion of the court, we are responsible alone for the opinion and not for the construction, inferences or deductions that counsel may place thereon.

The Board had jurisdiction. It did not act illegally. The railway makes no claim of fraud as against the Commission or the Board. The valuation placed on the properties of the railway for taxation by the Board cannot be reviewed by the courts, in the absence of fraud. See authorities cited in opinion.

Our conclusion is that the petition to rehear is without merit and must be overruled.

De Haven, Judge.

[fol. 278]

[File endorsement omitted]

IN SUPREME COURT OF TENNESSEE

[Title omitted]

ORDER—Filed Jan. 22, 1940

On motion of the plaintiff in error, The Nashville, Chattanooga & St. Louis Railway, it is ordered that procedendo in this case be stayed, and the supersedeas now obtaining therein be continued, for a period of forty-five (45) days from this date, in order to enable the plaintiff in error to prepare and file its petition for the writ of certiorari to the Supreme Court of the United States; and if such petition be filed within said period of forty-five (45) days, the said stay and continuance of the writ of supersedeas shall continue in effect until the disposition of said petition; but this order is conditioned upon the giving by the plaintiff in error of further and sufficient security in the additional sum of Twenty Thousand (\$20,000) Dollars, conditioned that if the plaintiff in error fails to make application for such writ of error within said forty-five (45) day period, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, it shall answer for all damages and costs which the defendants in error may sustain by reason of said stay. The bond executed by the [fol. 279] plaintiff in error upon the issuance of the writs of certiorari and supersedeas by the Circuit Court of Davidson County shall be modified, by endorsement, so as to make said bond include the conditions hereinabove specified; it having been made to appear that said modification has been made.

D. W. DeHaven, Associate Justice of the Supreme Court of Tennessee.

Approved as to form:

M. W. Barry, Wm. H. Swiggart.

[fol. 280]

[File endorsement omitted]

IN SUPREME COURT OF TENNESSEE

[Title omitted]

ORDER REGARDING BONDS—Filed Feb. 7, 1940

It appearing to the court that a stay order was heretofore granted in the above case by a Justice of this court,

pending the filing of an application for the writ of certiorari in the Supreme Court of the United States, upon the execution of further and sufficient security as set out in said order, and that by inadvertence the bonds filed by the plaintiff-in-error on January 22, 1940; with The Aetna Casualty and Surety Company, as surety, were not conditioned as required and set out in said order; and it further appearing to the court that the plaintiff-in-error has now tendered substitute bonds, with the same surety thereon, properly conditioned as set out in said stay order, it is ordered and adjudged that said substitute bonds be received and filed by the clerk of this court, and that said improperly conditioned bonds, filed on January 22, 1940, be by the clerk returned and delivered to the plaintiff-in-error and its said surety for cancellation.

Approved for entry:

Wm. H. Swiggart, Counsel for Plaintiff-in-Error.
M. W. Barry, Counsel for Defendants-in-Error.

[fol. 281] [File endorsement omitted]

IN SUPREME COURT OF TENNESSEE

[Title omitted]

ORDER RE ORIGINAL TAX RETURN—Filed Feb. 9, 1940

Pursuant to the authority vested in me by Rule 10, paragraph 4, of the Rules of the Supreme Court of the United States, on motion of attorneys of record for the plaintiff-in-error, The Nashville, Chattanooga & St. Louis Railway, to which the attorneys for the defendants-in-error consent, and it appearing necessary and proper that the original tax return filed by the plaintiff-in-error with the Railroad and Public Utilities Commission be inspected by the Supreme Court of the United States, on its consideration of the petition of the plaintiff-in-error for the writ of certiorari, I direct that the clerk of this court, in preparing the certified record for the Supreme Court of the United States, shall include as a part of the record, without copying the same, the original tax return of The Nashville, Chattanooga & St. Louis Railway, which is Exhibit No. 4 to the bill of exceptions and as such a part of the record of this court:

[fols. 282-285]. and I further direct that said original tax return shall be returned to the office of the Clerk of this court, upon final disposition of said petition for certiorari, the plaintiff-in-error having agreed to leave copy thereof in the office of the Clerk of the Supreme Court of the United States if that Court shall so direct.

Grafton Green, Chief Justice of the Supreme Court of Tennessee. (Seal.)

This February 9, 1940.

[fol. 286] [File endorsement omitted]

IN SUPREME COURT OF TENNESSEE

[Title omitted]

DESIGNATION OF RECORD—Filed Feb. 18, 1940

To the Clerk of the Supreme Court of Tennessee:

The petitioner having given notice that it will file its petition in the Supreme Court of the United States for the writ of certiorari to the Supreme Court of Tennessee, you are requested to prepare certified record to be filed with said petition, containing the following parts:

1. The record certified by the clerk of the Circuit Court of Davidson County, with exhibits thereto herein specified.

2. The assignments of error filed by petitioner in the Supreme Court of Tennessee.

[fol. 287] 3. All orders, judgments and opinions of the Supreme Court of Tennessee, and of any of the Justices thereof.

4. Exhibit No. 1 to the bill of exceptions, being the original tax return of the petitioner.

5. Exhibit No. 3 to the bill of exceptions, being the record of the hearing before the Railroad and Public Utilities Commission.

6. Exhibit No. 4 to the bill of exceptions, being an affidavit of Fitzgerald Hall.

7. That part of Exhibit Nos. 5, 6 and 7 to the bill of exceptions, filed as exhibits to the affidavit of Fitzgerald Hall, numbered: 14, 16, 23, 24, 28, 29, 30, 33, 36, 37, 38, 42, 45, 46, 47, 48, 50 and 51.

8. Exhibit No. 9 to the bill of exceptions, being the affidavit of Charles Barham, omitting the exhibit map attached thereto.

9. Exhibit No. 10 to the bill of exceptions, being the affidavit of L. E. McKeand, and the exhibits thereto.

[fol. 288] 10. Exhibit No. 12 to the bill of exceptions, being the assessments of 1934-1935, and 1936-1937, and the affidavit of W. S. Hackworth.

11. Exhibit No. 15 to the bill of exceptions, being the affidavit of W. H. Swiggart, with exhibits, and containing a true copy of Exhibit No. 14 to the bill of exceptions.

12. Exhibit No. 16 to the bill of exceptions, being the second affidavit of Wm. R. Pouder, and the exhibits thereto.

13. That part of Exhibit No. 19 to the bill of exceptions showing petitioner's income accounts for eight months of 1938, and distribution of revenue dollar.

14. This designation.

This February 7, 1940.

Wm. H. Swiggart, Attorney for Petitioner, The
Nashville, Chattanooga & St. Louis Railway.

Copy received by Attorney for Respondents, this February 7, 1940.

W. W. Barry.

[fol. 288-a] IN SUPREME COURT OF TENNESSEE

[Title omitted]

RESPONDENTS' DESIGNATION OF RECORD

To the Clerk of the Supreme Court of Tennessee:

Pursuant to the revised rules of the Supreme Court of the United States (February 27, 1939), Rule 10, subsection 2, paragraph 2, the respondents hereby designate the follow-

ing parts of the record in the above styled case to be certified to the Supreme Court of the United States:

1. Petitioner's Exhibit No. 18 to the Bill of Exceptions, the same being petitioner's brief before the Railroad & Public Utilities Commission of Tennessee.

[fol. 288-b] 2. Respondents' assignments of error filed in the Supreme Court of Tennessee.

3. That part of Petitioner's Exhibit No. 19 containing a map of the Railway System and the single page containing a statement of Mr. Hendley of the Tennessee Railroad Commission relative to the assessment of petitioner's property.

4. This designation.

This February 13, 1940.

W. W. Barry, Attorney for Respondents.

Copy received by Attorney for Petitioner this Feb. 13, 1940.

Wm. H. Swiggart.

[fols. 289-291] Clerk's certificate to transcript of record omitted in printing.

[fol. 292] EXHIBIT NO. 3 TO BILL OF EXCEPTION

BEFORE THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF
THE STATE OF TENNESSEE

[fol. 293] Nashville, September 14, 1938.

In Re: Exceptions of the Nashville, Chattanooga & St. Louis Railway to tentative assessment for the biennium 1938-1939.

[fol. 294] Nashville, September 14, 1938—10:17 a. m.

Before Chairman Porter Dunlap, Commissioners W. H. Turner and Leon Jourolmon, Jr. (Also present for the Commission; Secretary Dorsey B. Thomas, and Rate Expert J. O. Hendley).

Exceptions of the Nashville, Chattanooga & St. Louis Railway to tentative assessment for the biennium 1938-39.

Nashville, Chattanooga & St. Louis Ry., Wm. H. Swiggart, Nashville.

Chairman Dunlap: All right, gentlemen, let the commission be in order, please.

We have the assessment of the Nashville, Chattanooga & St. Louis Railway before us this morning. We are ready to hear the exceptions.

Mr. Wm. H. Swiggart: If the Commission please—

Chairman Dunlap: Judge Swiggart.

Mr. Swiggart: I approach the task before me with uncertainty as to procedure on account of the magnitude of the task and wishing not to consume too much time of the commission. Is it the wish of the commission I read the exceptions?

[fol. 295] Chairman Dunlap: Yes, read the exceptions, Judge.

Mr. Swiggart: I will omit the preliminaries—

Chairman Dunlap: All right.

Mr. Swiggart: (Reading)

“Item 1. Exception is made to the finding and conclusions of the commission that the value of the entire property employed and used in protestant’s system of railroad (Reads thru first paragraph item 7 and adds)—

That figure \$18,890,000 includes our general mortgage of sixteen million something, and half the L. & N. Terminal Company obligation. I bunched them altogether to produce that figure.

“Continues reading second paragraph Item 7 through 18th line of Item 15).

I told Mr. Wright, who made up this return, I must say that we do not charge that oversight to him; it was the failure of the railway.

Chairman Dunlap: It has been an historical oversight then, hasn’t it, Judge?

Mr. Swiggart: Yes.

Chairman Dunlap: Then it has been reported to the Interstate Commerce Commission as maintained?

Mr. Swiggart: Yes, that is true.

Chairman Dunlap: And the bonds of the company have been in there?

Mr. Swiggart: The bonds of the company do not detail how many miles of main track is in there. It rests on all [fol. 296] main and sidetrack mileage.

Mr. Hendley: I thought your bonds were on the per mile basis.

Chairman Dunlap: We can get to that later.

Mr. Swiggart: The value that is involved, we can make a point on now. We hope the commission will see it as we do and permit us to make the correction.

Chairman Dunlap: Just go ahead with your exceptions, Judge Swiggart.

Mr. Swiggart: I was just excusing Mr. Wright.

Mr. Hendley: That statement is signed by Mr. Fitzgerald Hall.

Mr. Swiggart: (Reading last sentence of Item 15)

"The commission is respectfully requested to permit the correction of the return filed by it, and to eliminate said mileage from the aggregate for the system and state in the assessment for the current biennium."

(Reads Item 16).

Allocati. System Value to Tennessee—touching on another historical question, now, if your honors please.

Chairman Dunlap: All right.

Mr. Swiggart: (Continues reading exceptions through paragraph 111 ending on page 20.)

The final paragraph is a statement of evidence filed. We have on August 31st filed with the commission affidavits [fol. 297] and exhibits verified by the affidavits which we desire to offer in support of these exceptions. Will the commission consider that evidence as read, or shall I undertake to read it all?

Chairman Dunlap: Oh, no. I think we can consider that as part of the record, Judge.

Mr. Swiggart: May I let the reporter list them?

Chairman Dunlap: They are exhibits you brought here on August 31st?

Mr. Swiggart: Yes. That is copy of a letter I brought here August 31st.

Commissioner Jourlmon: One of the points you made, Judge Swiggart, was that the commission failed to deduct certain mileage that had been removed during the biennium from the system of the carrier. Are you aware of the fact

when this was removed it was done on representation of the railroad that the removal would add to the economic value of the railroad and that was the reason the commission allowed it to be done?

Mr. Swiggart: I am not sure; I would not question your Honor's statement that it would add to the value of the system. I do not know that the operation of these branches was a drain on the system and the representation was made in that way. Your honors in assessment immediately pre-[fol. 298] ceding fixed an affirmative value on that mileage and now assign the affirmative value of the branch mileage to the road mileage, and it seems to me failure to reduce the system valuation by at least the amount of the assessment which at the time abandonment was being treated by the commission as the value of that mileage, is just a little bit inconsistent.

Com. Jourolmon: If the former assessment was a proper assessment, however, and the removal of it increased the value of the entire system, the commission would be justified in raising that to some extent.

Mr. Swiggart: Of course, that would be something for the commission to determine, but it seems to me that is inconsistent, in view of the late abandonment of the properties and also somewhat inconsistent with the present assessment based on uniform valuation of all mileage of the system.

Com. Jourolmon: It simply focuses attention on the fact that any assessment employs many inconsistent methods, and your exceptions are likewise inconsistent because you are there contending to deduct the actual physical withdrawal of something that had very little value, and on the other hand stating the only proper method for the commission to make assessment is a study of the earnings of the [fol. 299] road—in other words, the economic value of the road.

Mr. Swiggart: If it is the position of the commission—frankly, I don't know, I believe it is to fix the base entirely on the earnings—I have no point to make on failure to reduce it on account of the abandonment of so many miles.

Mr. Hendley: Mr. Commissioner, I think we did consider and allow them for abandonment of that mileage, for the reason in the last assessment we used that mileage to draw value into Tennessee; this year we did not use that mileage to draw value into Tennessee.

Mr. Swiggart: It doesn't have effect on the value the commission fixed on the system as a whole.

Mr. Hendley: The system as a whole is fixed and we used that mileage for drawing value into Tennessee. This year we did not use that mileage to draw value into Tennessee and you were credited with that abandonment.

Mr. Swiggart: I understood Mr. Jourolmon's question was to the system valuation that it created, the effect of abandonment of that branch.

Mr. Hendley: You got credit for abandonment on the P. & M. Division.

Com. Jourolmon: You misunderstood my question—My suggestion with reference to using earnings or economic [fol. 300] value as a predominant factor. The commission took into consideration a lot of factors. I understand the point being made by the carrier at the present time is that you are urging that should be the predominant factor.

Mr. Swiggart: That is true.

Com. Jourolmon: And practically the exclusive factor?

Mr. Swiggart: Under the present set-up, I think that is our position.

Com. Jourolmon: Are you taking the position that vacant lots in Tennessee which have no earnings value should be assessed at zero?

Mr. Swiggart: Of course not, if the commission please, and I think any railroad property in the State proper, it is recognized and has been recognized by the commission, the only value to the railroad system is its value to produce earnings, and I don't understand the commission is undertaking to assess this distributable property at the aggregate value of those lands in the distributable property. I understand your honor's point; a man may have an acre of timber land or farm land and he is putting it to no use, but he is in a position he could, but in railroad properties certain elements as to lands that they own and do not use, that they are taken as a lot.

[fol. 301] Com. Jourolmon: Are not one of those rules of proprieties that a commission must take into consideration the actual physical value, your reproduction value, you might call it.

Mr. Swiggart: You don't value the right-of-way in the light of what the adjoining farm lands are worth for farm purposes, you value it as part of the railroad system, and when you value it as part of the railroad system, then I

say, the earnings measure is the only measure the commission could ever adopt in order to get that. There are other tests, but in the final analysis, I believe I am right, you will find it is the earnings value that taxing boards are trying to get at. Looking at it through the eyes of the prudent investor, of the courts and taxing boards, that is the actual test. Prospective earnings, of which there is some reasonable basis to anticipate, and all those other factors—stocks and bonds, are given consideration by the commission.

Com. Jourolmon: If that were true, would not it have the effect of being discrimination in favor of railroads, because of the fact they could have and sell non-productive property, thereby escaping taxation; whereas if I owned a lot that was non-productive it would have to be taxed, which is prohibited by the constitution?

[fol. 302] Mr. Swiggart: That property would be assessed and classified as non-operating property, and there is no attack made on assessment of localized property, that is, non-operating property. There is a great deal of operating property assessed as localized property which is proper under our peculiar method in Tennessee of assessing property; if it is operating property, it is assessable as railroad property is assessable, but I think the courts have uniformly sustained the general earnings method of assessing railroad property.

Com. Jourolmon: In fact, is not that one of the factors to be taken into consideration, Judge Swiggart?

Mr. Swiggart: I don't think so. I think the courts—there is some careless use of words—earnings or the general figures, after all, I take it is the earnings that is the value of the property.

Com. Jourolmon: For instance, I could ask the same question I asked about the vacant lots, as to operating properties, for instance, an automobile that is not listed.

Mr. Swiggart: I assume, in fact I assume from utterances of the commission that the method employed was to get the value of the entire system and break that down for Tennessee.

[fol. 303] Chairman Dunlap: That is the only way, Judge Swiggart, the commission could do from reports made by the railroad. It is the most practical theory, as when you asked approval of rates by carriers in Tennessee we could not get them to break down their revenues for the State; they gave the revenues for the system. In our questionnaire we

asked the revenues for the State. Your answer is you could not break it down. The only method we have had is the method I think you stated awhile ago, is as historical as Mr. Wright's inclusion of the West Nashville Railroad. We have assessed the property as a whole and broken it down, after exclusion of localized equity in the State.

Mr. Swiggart: I say making valuation by that method, you don't find it possible to take into consideration the fact here is a vacant lot somewhere in the State, not used at all; the whole thing is a unit. It is that point in respect to this property I am addressing myself. The earnings, by the present earnings is the only fair and reasonable and accurate method of reaching the system's worth.

Chairman Dunlap: We have uniformly accepted figures of the railroads without the state. In the state we have accepted theirs, too, but, of course, we have witnesses as to whether it is operating or non-operating property.

[fol. 304] Mr. Swiggart: Of course, it is apparent from the many phases in this issue, which I find it difficult to solve—in my present state here I find myself treating the question as if we were all trying to work it out together. It is the purpose to try out the case as I have addressed the commission.

Chairman Dunlap: We will permit all of the exhibits which have been filed and referred to, including the memorandum you handed the reporter, to be received and filed.

(The memorandum handed reporter is dated August 31, 1938, addressed to the Commission, and reads as follows:

“For the Nashville, Chattanooga & St. Louis Railway I hand you herewith its exceptions to the tentative assessment made upon its properties in Tennessee for the biennium 1938-1939, on August 22, 1938.

In support of the exceptions so filed I am transmitting to you herewith, by messenger, for filing, the following:

1. Affidavit of Fitzgerald Hall, together with 3 vols. of exhibits, Nos. 1-16 and 18-52 inclusive, and Exhibit No. 17 bound separately.

2. Affidavit of Charles Barham with exhibit attached.

3. Affidavit of L. E. McKeand, with exhibits 1-8 inclusive attached.

4. Affidavit of C. M. Darden, with exhibit photographs attached.

[fol. 305] 5. Assessment of N. C. & St. L. Ry. for 1934 and 1936, identified by affidavit of W. S. Hackworth.

6. Charts and tables containing statistical record of present status and condition of American railroads, verified by affidavit of J. H. Parmelee.

7. Affidavit of Wm. R. Pouder, with exhibit attached.

9. Affidavit of T. M. Mitchell, with exhibits attached.

10. 124 affidavits of county tax assessors, other county officers and citizens, relating to local assessments of property for ad valorem taxation.

11. Certified copy of a financial statement for Hamilton County, issued by the County Judge.

12. Bound volume containing copies of the 124 affidavits referred to under item 10 above, classified by counties, indexed and analyzed for convenient reference, with a prefatory affidavit of the undersigned, to which excerpts from the Rye Tax Report are an exhibit.

An additional copy of any of all of the foregoing will be furnished the commission is desired.

With the permission of the Commission, I shall file a supporting brief on or before September 14, 1938, the date assigned for the hearing.

Respectfully, (S.) Wm. H. Swiggart, Counsel for The Nashville, Chattanooga & St. Louis Railway."

[fol. 306] I have one additional paper I would like to offer containing some statistics which are not otherwise in the record to date: I handed Mr. Hendley a copy this morning. It is a comparison of all Class One railroads. It is the matter of distribution of railway operating revenues to all classes of expense and finally down to net railway operating income in percentage figures, for The Nashville, Chattanooga & St. Louis Railway as compared with Class 1 Railroads in the United States, taken from a publication dated July 15, 1938, issued by the Association of American Railroads under accounts of distribution as kept of American Railways, of which Mr. Hendley has a copy. May I hand this copy to the commission and ask this be treated as part of the testimony in this case? It will be referred to later

on, but I made copies that the commission might have it before them.

The theory we have in this case is that under the record in this case the method of earnings of the several classes of property included in the system, capitalized at a reasonable rate, which, we think the commission will agree, no doubt, six per cent is a reasonable rate, constitutes the only accurate method of arriving at valuation of the system properties.

We have filed a rather elaborate preparation of the condition of the railroad industry as a whole. I don't think [fol. 307] it appropriate to take up the commission's time at this time by repeating or reading from the evidence on that feature of the case. I understand the last few days the commission has heard a great deal along that line. I do think it worth while to refer to Exhibit No. 20, affidavit of Mr. Hall, which is a compilation and report of the Bureau of Statistics of the Interstate Commerce Commission, showing rather graphically the effect on the railroad industry in the United States of what I term revolution in transportation since 1925. The exhibit contains a commodity study of commodities moved by railroads in the base years 1923-1925 with average length of haul of each commodity and number of tons of each commodity carried in those years by the railroads. The index of industrial production of those commodities is computed from governmental records. The years 1923-25 was treated as 100 per cent base for the purpose of making comparison of subsequent years, and the tonnage 1923-25 was also used as a base. Studies were then made as to fluctuation of railroad tonnage over each year, base years 1923-25 through 1936, and the indices of the commercial production of commodities moved by the railroads was carried forward each year and the tonnage of railroads compared. The net result of that study as shown under the [fol. 308] study of Mr. Lorenz, who is the most able statistician of that Bureau, compared with 1936 commodities moved by the railroads, the railroads lost to competitive methods of transportation 196,000,000 tons of freight. Based upon the average haul of the several commodities in the aggregate as carried by the several railroads in 1936, the Bureau computes the revenue loss by railroads in that year, on basis of 1923-25 they had a right to expect to get, the revenue loss was a little over a billion dollars, a little over 25 per cent of the total of Class 1 railroads. The Com-

mission said presumably it was not the average haul of those commodities the railroads lost mostly, but the shorter haul, and therefore reduced their minimum figure of revenue lost to competing transportation to \$615,000,000.00 for 1936, constituting about 15 per cent of the gross revenues the railroads took in from operation for that year, so the actual loss is somewhere between six hundred and fifteen millions and one billion, one hundred million dollars maximum.

I think that study, considering the care with which it is made, renders somewhat unnecessary any detailed reference to the situation as a whole, because it shows graphically just what has happened; that is the result of what has happened. We have offered evidence showing increase in rent years and the present trend of increase, which seems most likely will continue, in the present competitive systems of transportation with which the railroads have to compete.

In my brief I have referred particularly on this subject of the general railroad industry to utterances of Commissioner Eastman and Chairman Splawn of the Interstate Commerce Commission, and I am particularly interested in the statement of Chairman Splawn that the railroad industry is basically sound, but the emphasis he placed on that is, provided the government will adopt a transportation policy not only for the railroads, but all transportation agencies, which will enable the railroads to handle that part of the business which each is adaptable to handle, on fair terms. We urge upon the commission that the possibility that the government will adopt such a transportation policy, abandoning its present policy of favoritism, whether otherwise, its treatment of railroads, is certainly not an asset, in treating the present railroad value.

I think I should like to comment in some little detail with respect to roadway and traffic and equipment of the tax-[fol. 310] payer which I am not representing. I call attention to facts shown in the evidence that during these depression years that the total revenues of the Class 1 Railroads of the country have dropped to about 81 per cent; for the N. C. & St. L. Ry. that figure shows a drop down to about 69 per cent of revenues since the depression started, the point being that the N. C. & St. L. has lost more heavily and has further to go to the income position than the average railroad, and certainly under the evidence submitted to the commission, the path back to an income producing position is not only

longer but more difficult. The loss of gasoline traffic to the barge lines of the Cumberland and Tennessee Rivers is rather concisely shown by Mr. Barham to Mr. Hall and in exhibit to his affidavit, Exhibit No. 16, and if I may read just a few paragraphs from that exhibit I think the picture can be presented better than I can describe it:

The movement of petroleum products by river, principally on the Cumberland, (Reading from Exhibit 16 to Mr. Hall's affidavit,) but now also on the Tennessee, is a circumstance of importance in any consideration of the value of the N. C. & St. L. for purposes of taxation.

The movement of these products by river on the Cumberland began within the last few years. Government reports for 1936 show there were handled in that year on the [fol. 311] Cumberland River below Nashville 243,780 tons, above Nashville 25,767, a total of 269,547 tons, which is the equivalent of 80,864,100 gallons.

Four important oil companies now barge petroleum products on the Cumberland, with unloading tank stations at Dover, Clarksville, Ashland City, Nashville and Carthage; Nashville is more important than the four others combined.

The N. C. & St. L. has for some time maintained a record of gasoline reaching Nashville by river. In 1936 this was 53,414,400 gallons; in 1937, 67,371,000, an increase of 13,957,000 gallons, or approximately 38 percent. In the first six months of 1938 there were handled 33,355,000 gallons against 30,810,000 in the corresponding period of 1937, a further increase of 12 percent.

The oil receivers in Nashville use 26 tanks with a total capacity of 13,643,760 gallons. The barges employed, some 13 in number, have varying capacities up to 550,000 gallons.

Petroleum products reaching Nashville by barge are distributed not only in Nashville proper, a considerable per- [fol. 312] centage is shipped by rail within short distances at rates reduced because of the competition offered by trucks from Nashville. The loss to this company because of the river movement is, therefore, twofold, first, a total loss on the consumption at Nashville and at nearby stations reached by trucks; second, that caused through a reduction from otherwise normal rates where rail service is used from Nashville."

and a table showing reduction in rates from Nashville to points within trucking distance for gasoline below compen-

satory rates made necessary by reason of truck competition.

That Statement is shown in the affidavit in connection with the observation that the barges bringing this gasoline here cannot be taxed by the State in any way.

Chairman Dunlap: I was just going to inquire if he included in there statement of gasoline hauled to the respective villages, in that affidavit there—the gasoline hauled? What I mean, Judge, if that gave the total amount of gasoline hauled for 1935, 6 and '37.

Mr. Swiggart: By the company?

Chairman Dunlap: Yes.

Mr. Swiggart: I don't believe they did.

Chairman Dunlap: From that the commission could get about the amount they lost.

[fol. 313] Mr. Swiggart: I think they assumed, if they put that in the affidavit, that that moved by river would have moved by rail.

Chairman Dunlap: If that did not move by river, it might not have been hauled.

Mr. Swiggart: By trucks.

Mr. Hendley: Judge Swiggart, those are trucks of their own and not for-hire trucks.

Mr. Swiggart: You mean the distribution from the river?

Mr. Hendley: Yes.

Mr. Swiggart: I presume that is true. An affidavit from Mr. Barham of competition developed by and fostered by the Tennessee Valley Authority and statement of the chief engineer of that Authority is quoted as showing in the Tennessee Basin that one-third of all the traffic could be moved by the proper development of water rather than by rail. I have here a geographically correct map of our system which I think the commission should like to have before them. It shows how the Tennessee and Cumberland Rivers do parallel and serve the area served by the Nashville, Chattanooga & St. Louis Railway.

[fol. 314] As a very direct result of competition and inroads on rail traffic on this system, we call attention to the fact that since 1928 that 43 agencies on branch lines had to be closed on account of lack of business, leaving only 27 agency stations on branch lines.

An exhibit which is rather graphic on movement is that on the movement of livestock to the market at Nashville,

showing that in one of the 1920 years, I don't remember which, I don't think it material, that 90 per cent of all the livestock received at the Nashville Stock Yards came by rail, and the figure for 1937 was 90 per cent was by trucks and only somewhere between 3 and 4 per cent of livestock movement by rail.

An exhibit to Mr. Barham's affidavit demonstrates the fact in Tennessee particularly the various branches of our system leave the main line almost at right angles, so the distance to be traveled from points on that branch line to Nashville and Chattanooga, as the principal markets of the system, is a great deal further than the distance from those points to the respective markets via paved highway.

An exhibit to Mr. Barham's affidavit is a road map and shows how closely the lines of The N., C. & St. L. Ry. in [fol. 315] Tennessee, including branch lines, are almost directly paralleled by highways, and the distance tables which I should not perhaps take time to read now, and shows the mileage, the shorter distances by truck and the longer distances by main line movement. It has seemed to me in my study of the situation of The Nashville, Chattanooga & St. Louis Railway that it was entitled to particular consideration in the matter of system valuation because of its competitive situation with respect to other forms of transportation. The N., C. & St. L. System is a part of a through freight routing from points in the northwest served by the Illinois Central Railroad and connecting lines going to points in the southeast through the Atlantic gateway. It is also a link for through routings from points in the southwest reaching our system at Memphis and going to points in the southeast through the Atlanta gateway.

The Railway is enabled to operate and serve the people who live in the area touched by its lines by reason of the fact it is able to draw to the line of its railway through traffic from points in the northwest and southwest to points in the southeast, and of course, in the reverse direction, which, but for efficiency in handling on our part, and I might [fol. 316] say efficiency in soliciting, could move over other available routes and never touch this state.

My personal feeling is this railway by reason of its ability to obtain and serve that traffic creates taxable value in Tennessee, both for itself and the industries which are developed by the fact the railway is a large customer of their products in Tennessee, and it seems to me that in the valuation of this

system, recognizing that exact mathematical accuracy is never possible, that discretion must be exercised, that we are entitled to invoke consideration of this nature of our traffic, of this service the operating management renders to the government of Tennessee by its ability to bring to this State this highly competitive traffic, but for which there would probably be no taxable value in our system. In other words, but for it, we would not be here as a solvent property but here as a property operated for the benefit entirely of its creditors. Now, I think the commission should recognize, within reasonable discretion, that imposts add to the difficulty of railroads in obtaining traffic. I say that for the reason that the proof filed with the commission shows that to handle such competitive traffic excessive operating costs must be incurred by the railway system, and further, the evidence shows that the physical characteristics of the roadway and roadbed make the N. C. & St. L. System one excessively costly to operate.

[fol. 317] Now, I have set out on page 31, I believe, of my brief, a comparative table of operating costs of this railway as compared with other class one railways of the nation. It shows freight car miles per train mile, which reflects the number of cars in train, for our system 31.9, and for the national average 46, that our freight trains carry one-third less cars than the average for the nation. When it comes to net ton miles we carry in our trains—these figures are for 1937—our trains make net ton miles per train mile 444, the national average is 796. Only in speed of movement do we excel; our freight train speed is 18.2, whereas the national average is 16.1. We have to carry this traffic fast in order to get it there. Gross ton miles per train hour percentage—I will give it this way 22,000, for the national average 30,000, and as pointed out in the brief, that condition reflects condition of equipment, speed of trains and condition of roadway that enables movement to be handled in long trains or short trains, so forth, and is a most significant operating statistic. The net result is, whereas the expense for the nation's railroads averaged 6.41 per 1000 revenue ton miles, that expense on the N. C. & St. L. is 9.61—just fifty per cent higher.

Now, I have already referred to the competitive nature of the traffic as contributing to this result, the physical condition of our roadway with respect to grades and curves necessarily cause that; if the grades are excessive,

the engines cannot carry as many cars, if speed is to be made over those grades then still fewer cars can be carried in order to maintain speed. Mr. Barham's affidavit, which I have quoted from in the brief, shows how greatly the curves on our roadway exceed the average and exceed the maximum prescribed by modern railway practice as being efficient with present operating efficiency.

As the commission knows, our roadway was constructed many years ago and traverses hilly and mountainous sections, and in some cases some of these grades by an expenditure of large sums of money can be reduced, but in many cases they are not susceptible of being reduced. With respect to curves, the affidavit points out over the normal and number consistent with efficient operation on the line of the W. & A., the 138 miles we lease from the State of Georgia, he points out rather graphically the number of curves in that section of road if brought together would make thirty complete circles.

Mr. Hendley: That is in Georgia?

Mr. Swiggart: We are talking about the whole system.

Mr. Hendley: I have heard him testify before—

[fol. 319] Mr. Swiggart: I had not heard it; if I give anybody too much of it, stop me.

Mr. Hendley: I thought it was 32 circles.

Chairman Dunlap: The only circle, I thought, in Tennessee was the Centerville Branch.

Mr. Swiggart: The Centerville Branch is all curves. It is rather interesting to read what he says about it, but I am not going to.

The evidence points to the reasonableness of our short trains, the necessity of running trains on schedules carrying one, two, or three cars, whatever are offered us by connecting carriers.

The commission no doubt knows each night at Martin, Tennessee the Railway receives a number of cars from the Illinois Central which it carries to points on the line and others through to Atlanta. Now this table of distribution of operating revenues which I handed the commission this morning, I don't find that I kept a copy of it; I think is interesting in support of the point I have been talking to, that the operating costs for our system are excessive to the proportion of similar costs on other roads. This table, and I will refer only to the last column, which are 1937 figures, shows percentage of railway operating revenue—

[fol. 320] Mr. Hendley: That statement you read from, the Association of American Railroads, was it for 1937 or twelve months ending June, this year?

Mr. Swiggart: We don't keep any records, so far as I know—

Mr. Hendley: That statement I understood you read the Association of American Railroads was for six months ending June, this year.

Mr. Swiggart: I did not so understand it.

Mr. Hendley: I just wanted to know if we were comparing like with like.

Mr. Swiggart: It is from Dr. Parmlee's exhibit, and I don't know if it is 1936 or 1937. Mr. McKeand's affidavit shows. The figures for the nation were taken from this chart filed by Dr. Parmlee in this case and the figures for our system are compared. Now, this table, the figures for the class one roads of the nation, are taken from the published income account statement of the Association of American Railroads, shows figures for 1937 breakdown, that is, distribution of operating revenues, for the class one railroads and in the forward column we give that percentage for the N. C. & St. L.—Labor costs for the nation represent 44.8 per cent of total railway operating revenue; for the N. C. & St. L. the corresponding figure is 56.4, a difference of approximately 12 per cent adverse to our railway. I would like to pause here to reconcile this statement with statement in Mr. McKeand's affidavit in which he placed the ratio of labor costs in this system to operating revenues of 62 per cent. In that figure he was including all payroll costs, including costs paid for labor in the shops and storehouses for making, assembling and storing material. In the operating statistics from which this table is computed all that labor cost, such as storehouse expense and cost of manufacturing material, such as bolts, tie plates, whatever they make up in the shops, that is entered up as material and shop expense. It is necessary in making up its operating costs that that be done as costs fluctuate in shops, some making all the material they can make and some making none; therefore, whenever a railroad pays a group of men for the manufacture of tools that go into the railway they enter that up as material costs and not labor cost. This figure is strictly labor costs that go into railway operating, and labor for the nation

represented here is 44 per cent, 44 cents out of every dollar, and for this system 56 cents.

[fol. 322] Fuel costs for the N. C. & St. L. are slightly less than compilation for the national average, the nation's average being 6.2; materials cost went a little higher, national average being 17.3, for our system 18.7; our loss and damage, which includes pensions expense was 2.1 per cent, the national average 1.8 per cent; depreciation account, which includes only depreciation on equipment and some very small and insignificant items which creep in as shown in the balance sheet, I understand we charge only 3.6 for depreciation; the national average is 4.7 per cent. In taxes, our railway tax accruals, that doesn't include miscellaneous accruals on non-operating property, 6.1, national average 7.8%. If we should add a figure fairly commensurate with what we would have to pay in Georgia if the W. & A. was owned by citizens rather than the State, our figures would go up to the national average. That is the only figure in this table in which the N. & C. doesn't show a figure less favorable than the average for the Nation.

Chairman Dunlap: If it appears the railroad is doing by itself what the Tennessee taxing authorities have done for it, it would be on an even keel with the nation's average.

Mr. Swiggart: I don't know what you mean by taxing authorities doing for it. The net railway operating income [fol. 323] for the N. C. & St. L. was 5.9, the national average was more than double that—14.2 per cent, and the two preceding years, 1935 and 1936, shown on this table, the commission will see that that relatively adverse position occupied by this railroad was the same. So, it seems to me the figures, records and statistics for this particular system, taken alone, or in connection with the statistics and records of the industry as a whole, are such that would absolutely prevent any prudent investor from anticipating an income yield in the future greater than that produced by present operations as basis for establishing value to the system, and that is the primary purpose that has caused us to present these facts to the commission showing the excessive cost of operation of this system as compared to the nation. I don't know how I am getting along in the matter of time—It seems to me I am getting along pretty well—

Chairman Dunlap: I was going to say, Judge, you have been doing pretty well.

Mr. Swiggart: Is the commission going to have an afternoon session?

Chairman Dunlap: Yes, sir, if you wish—

Mr. Swiggart: I don't think it would take me so long to conclude.

Chairman Dunlap: We can hold right on to 12:30.

[fol. 324] Mr. Swiggart: I don't believe I can get through in half an hour, unless it is desired I should.

Chairman Dunlap: No, no, not at all, Judge. If it is desirable, we will adjourn.

Mr. Swiggart: There are a great many figures, and figures are awfully hard for me.

Chairman Dunlap: Would 1:30 be all right?

Commissioner Jourlmon: Judge Swiggart, when reading your brief last night, I am afraid the trouble with your case you have made too strong a case. In other words, if we go with you and accept your figure, six millions dollars for property assessment of the N. & C. in Tennessee, it means a complete revolution, you might say, of the tax methods of the State, tax methods of the commission. It means we are going to have to go back and take all utilities, take motor carriers, take all these other railroads and cut them all, I should say, about 80 per cent, cut them down to 20 per cent of assessment of what we have done, as long as we have followed the same general principles of doing it. That is such a drastic principle you have asked us to do, it seems the only thing the commission can say is we cannot do it, and if we are wrong, the supreme court will order it.

Mr. Swiggart: I did not know how to present the case [fol. 325] except as the facts justified. I realize the import of the point you make. I don't want to say anything now that—I don't know how to answer your honor's question except to say we were trying to present a factual case, we were trying to present a factual case from Published records as nearly as we possibly could; and it is simply one for the commission, if our factual case is correct, and if the commission cannot give us as much relief as the facts would justify, without violence to the procedure and precedents you suggest, then give us the relief that you can.

Chairman Dunlap: Following Mr. Jourlmon's suggestion, Mr. Swiggart, a thing you might be thinking about during the noon hour, it would be an uprooting entirely of the taxing base of the State and affect materially the ques-

tion of revenue for running the government, but the commission recognizes, contrary to the statement you made in your brief that we had not given consideration to economic conditions, since 1929, before 1930, I think it was, we had your road assessed at about twenty-six million dollars; we recognized immediately the depression when it came, as I think all taxing authorities did, and we have progressively reduced your assessment from \$26,000,000, to—

[fol. 326] Mr. Swiggart: You have made a total reduction of 36%.

Chairman Dunlap: On down to \$16,499,000.

Mr. Swiggart: The reduction in assessment from the maximum this commission placed on the property is 50 per cent. The present decrease in operating income is 82%. We appreciate what you have done heretofore. The only explanation I can offer for the apparent acquiescence by the Railway in its previous assessments is on basis of the lady that continues to pay her poll tax after 50 because she doesn't want to admit her age. There are a great many facts we submit with great reluctance, but we have submitted it as best we could.

Chairman Dunlap: We will adjourn until 1:30.

(Reconvened at 1:29 p. m.)

Mr. Swiggart: I wanted, because it seemed to me so very importance, because it seemed to take so little time to deal with that portion of brief dealing with the physical condition of our equipment, that because it is carried at a book value of \$7,648,000.00, which is made up entirely of cost less depreciation accrued in accord with practices established by the Interstate Commerce Commission and supervised in every detail by the Interstate Commerce Commission, and in that connection I call attention to the fact that our ratio [fol. 327] charged to depreciation as shown in comparative statement furnished the commission is less than the average of one per cent of the operating revenue; the importance of the matter being that obviously the value of the equipment above scrap is absolutely tied in with the ability of this company to use this equipment on this particular system. The age of the equipment, its lack of modernity, its lack of conformity with modern trends of modern equipment, I think it could be said to have no sale value other than scrap: no first-class railroad, no second-class railroad, will invest money at the age and condition a volume of our equipment is

shown to be in. On page 35 of our brief is beginning of a description of locomotives: out of 194, 87 are more than 30 years old; 77 from 20 to 30 years old; 25 from 13 to 19 years old; 5 eight years old. I think the commission is thoroughly aware, at least in a general way, of modern locomotive improvements. The freight car total of 6344 is less than the total reported for taxation as of the assessment date, while we recognize the subsequent destruction does not remove them from the aggregate to be taxed, some of them were not in existence but had to be reported January 10th as equipment. 1216 of them are more than 30 years old; 1723 from 25 to 30 years old; 932 from 20 to 25 years old; 1928 from 10 to 20 years old; 545 recently acquired or rebuilt. The [fol. 328] condition of these cars: 366 are below standards of A. A. R. and must be withdrawn from interchange movements this year unless substantial changes or modifications are made; such as application of truck sides, and there was 1335 shorter than the standard, not only expensive to maintain but extremely doubtful if the expense to continue to repair these cars is justifiable, and the proof shows that a large number are not worth anything except as scrap; 1026 are stored in bad order. Of the passenger train cars: 59, something over a third of the total, are just wood cars used in branch service, and I am a little ashamed to say, in my native town of Union City, in short trains: 15 of them steel underframe, average age 20 years; 79 steel coaches throughout. The point I make is the book value takes not into consideration at all the bad, poor condition and extraordinary amount of repairs and maintenance, and the conditions required to keep these cars in service of the railroad. The income statements that are on file show that with respect to this equipment maintenance was recommended for this year in the sum of \$1,339,000 in excess of the maintenance that the railway can hope to put on them. It is not only startling but amazing to me, that in a normal year the cost of maintenance is half the value of our equipment. Of course, we recognize the age and condition of the equipment: when you [fol. 329] take old equipment like that and defer maintenance to the extent of a million three hundred thousand dollars, obviously that equipment is worth less now than the book value of service like would indicate. In addition to that maintenance deferred this year, shown to be 17 per cent of book value, a table is made up and put in the record showing alterations, new appurtenances to be attached to

these cars and engines to continue them in use over the next period of years, that sum is \$1,409,000, which is 18 per cent of book value of this equipment.

I think the commission, residing in Nashville, will probably know judicially, although I don't think that particular fact is stated in the record, the Nashville shops of this Railway have not been open since last year, except a skeleton force to make running repairs; there is no force there to make major repairs to engines or cars. The force of men laid off at the Nashville shops alone is 500 men. Of course, with 500 men out of work the past eight months, in and of itself, in deferred maintenance, to get this equipment up and keep it up to book value in the next few years, for any tax returns.

Of course, in determining the system value it seems to me the value of the roadway must be controlled to a large extent by the amount of equipment, that is the value of the equipment used in connection with the roadway. If the roadway can be operated with equipment of five million dollars, you can expect one figure; if the figure is ten million dollars the profit to be yielded is correspondingly less, so we add to observations this morning in regard to our traffic conditions and condition of our roadway, a detailed description of rolling stock, and excessively large sums of money to bring that equipment up to the present value carried on the books of the company—

Mr. Hendley: Judge, right there, what is the rate of depreciation allowed by the Interstate Commerce Commission on an ordinary box car?

Mr. Swiggart: Mr. Hendley, I haven't the slightest idea.

Mr. Hendley: It might be if some are twenty or thirty years old and rate of depreciation is five per cent per annum it might be your book value shows them at nothing.

Mr. Swiggart: You might be right about that, yet I expect the inequality of that might be ironed out on this whole system, and if that is true, these discrepancies would be ironed out and found to be true; but these inequalities may be. I don't have any way of defending the commission. I took the position the Interstate Commerce Commission to be prima facie correct before this commission.

[fol. 331] Mr. Hendley: The depreciation added is taken care of in your return?

Mr. Swiggart: We returned them at the depreciated value, which simply measures the life.

Mr. Hendley: Whatever you allowed for depreciation is charged to operating expense?

Mr. Swiggart: I think you are right about that. I think that is true.

Now, on the question of buildings and structures, we have offered photographs of buildings and structures on which no charge should be made—some of them box cars set out without wheels, old sheds, and other buildings; description made by Mr. Darden, superintendent of machinery, of average age of shop buildings at Nashville which demonstrates the inadequacy of these shops for modern locomotives, one showing a modern locomotive in roundhouse sticking ten or fifteen feet out of the doorway because the house is inadequate to make repairs. Now on bridges, the proof shows eleven from 40 to 50 years old on falsework and which should be rebuilt, in order to be made safe, and a number of others have slow orders which must be repaired and improved, and kept so, and all of that shows operating expenses as compared to operating income must be greatly [fol. 332] increased in the years ahead in order to keep this property adequate for the public, and all of which should be considered by this commission as to how much, if any, should be added to our system on its present earnings.

The assessment of the commission of August 22nd, as well as the statute, refers to the franchise as an element to be considered in determining system value. We quoted in our brief the statement of an early decision, 55 Tennessee—I believe I am wrong on that citation—Railroad V. Bate, 12 Lea, referring to the instrumentality of a railway roadbed, superstructure and franchise, and I think he might have added "equipment" in determination of the value, the court concluded the statement with this—

"The franchise is the right to use the bed and superstructure, its value depends solely upon their use and the profit derived therefrom."

I have heard decisions criticized by counsel that found them not to their liking because they were too old, but in these fundamental principles I don't believe these decisions that have been on the books so long, I don't think that is true. I was particularly struck by a statement by Mr. Seligman in a book I had, in the 10th edition, I am not so sure that is the most recent edition, where he was discussing re-

[fol. 333] course to the future earnings of a corporation as a measure of its value. May I read this quotation?

Chairman Dunlap: Yes.

Mr. Swiggart: This is page 6 of the brief. This statement is not with specific reference to railroad property, but with respect to property of large corporations——

“If the basis of the corporation tax is to be put in terms of property, corporate property includes more than merely the physical property. The franchise or the immaterial elements——

(I think he uses the word ‘immaterial elements’ as referring to intangible property)

“——in the property must be included. As soon, however, as an attempt is made to measure the value of the franchise, recourse must be taken, as we have learned, to earnings. It is a commonplace of modern economics that capital is nothing but capitalized income; or, to put it in terms familiar to every business man, a business or a piece of property is worth what it will earn. As the Wisconsin commission puts it: ‘It is the financial rule in the markets of this country and all over the world, that the worth of property is determined by what it will produce in income. If the permanency of the income is assured from past results in [fol. 334] operation, the risk of investment is less and the value more stable. The earnings in the opinion of financiers is the final test of the value of corporate securities, and the estimate of the earning capacity of railroads formed by such men and acted upon in buying and selling of the securities in the market generally establishes the market price.’

That is a note of the Wisconsin commission in the Seligman proceedings.

“Where individual pieces of property are subject to purchase and sale in the market, the property or capital value is as readily ascertainable as the earning or income value. But where, as in the case of large corporations, there is no market or no regular purchase and sale, the only possible method of ascertaining capital value, (or so-called property value) is by capitalizing the earnings, present and prospective. Hence the ad valorem system cannot satisfy itself with the inventory method, or the mere appraisal of the physical property of a corporation. It has been found nec-

[fol. 335] essary to add the valuation of the franchise; and as soon as this is done, the earnings method which has been abandoned is brought in again by a back door''.

Of course, we think that quotation is in exact accord with the method this commission has followed a number of years, not in speaking of value of railroad but by taking going concern value, the value of the property as a unit, and all of the authorities we have been able to get, either start or come back to the proposition that the earnings of the property is the only real test of that unit of system valuation, which is simply another way of saying the franchise value. We have tried to point out here the franchise value of this road is the figure arrived at by capitalization of the earnings of the most recent operating period. We would be willing of course to take 1937, but 1937 would be less than the average for the seven years we have used for basis of that computation. As I have probably repeated myself in saying the whole case before the commission seems to eliminate any substantial addition to the capitalization of the present earnings of the system as measuring prospective earnings, as there is no reasonable basis in fact to attribute potential earning power to the system.

[fol. 336] Now, I have handed to the commission copy of this exhibit 4, affidavit by Mr. McKeand; in previous assessment, I had not seen the assessment for this year, when this particular exhibit was prepared in previous assessments the commission has commented, and I think rightfully so, on the fact that the net railway operating income doesn't include all the income of railroads operating in Tennessee from which income is produced. I don't know whether in other states the practice is the same as in this state of including localized property or assessing as localized property station buildings and structures directly connected with railway operation and which are directly railway property, but the fact that localized property includes non-operating property and some operating property does make an overlapping in earnings or income and it is an element of complexity to tax. In this exhibit we have undertaken to include for the seven-year period every dollar of income arising from property subject to taxation. The first column after the year is the net railway operating income; the second column is income from lease of road. Now, the property producing that income, as I understand, at least

on this system, is short stretches of tracks which this company finds unnecessary for its own use and leases to some [fol. 337] other company whose tracks are contiguous. Now, the taxes on that have been deducted to produce net operating income. Secondly that sum arrived at, lease of road, should be added to net operating income without deduction. Now, the third column, miscellaneous rent income is income derived from rent on operating property. We find in many situations a piece of property included in the operating property is rent for a warehouse or loading platform, or various properties of that kind. That is the kind that produces this miscellaneous income. Taxes on that property have been included in deductions before reaching net railway operating income, so miscellaneous rent income should be added to net railway operating income without deduction.

Com. Jourolmon: Judge Swiggart, what was the assessment 1936-37, biennial assessment?

Mr. Swiggart: It is two dollars short of sixteen and a half million—\$16,499,998.00.

Com. Jourolmon: What is the present assessment?

Mr. Swiggart: Sixteen million two hundred twenty three thousand, in round figures.

Com. Jourolmon: Mr. Hendley, was this one of the railroads I thought should be a little higher in our conference? [fol. 338] -Mr. Hendley: I don't recall.

Com. Jourolmon: Excuse me, Judge Swiggart, the thing that led me into that, the figures on this net railway operating income, I was taking the average of the two years prior, 1934 and 1935, which would have been the latest criterion on which to base an assessment for 1936-7. And your net operating income averaged \$738,276 for that biennium. For the next biennium, 1936-7, which is the best criterion we would have for the present, in other words, to judge this, would average \$1,111,565, which would justify about a thirty per cent increase.

Mr. Swiggart: Now, of course, if your honor please, the assessment of 1934-5 was not predicated upon two years net railway operating income figures. Previous to that time, previous to the 1934 assessment, the commission had uniformly included in its report of assessment that figure for five years. For the first time, this commission that year included seven years, which carried the figures back into the pre-depression years, and presumably we would be entitled to know that the commission based its findings

on net railway operating income for the seven-year period, using that as basis of earning ability.

An examination of income accounts of this railway, and, [fol. 339] I think perhaps others, will disclose that no two years net railway operating income is a satisfactory basis from the standpoint of accuracy for making any conclusion as to the earnings of the road. You take in 1936 when we showed \$51,000 corporate income, if you will examine maintenance accounts, equipment account particularly, and other accounts, you will find the economy in maintenance and deferred expenditures was the way that fifty-one thousand was produced. A careful study, analytical study of railroads would never lay a conclusion on present values on a mere two years analysis. An intimate study of the whole operations would demonstrate to you whether these figures were normal figures and were not increases or decreases by the deferments of expense which must be made up, so I think, if your honor please, the figures your honor suggests, the figure for 1936 and 1937, would afford a basis for capitalizing now, is hardly backed by the facts——

Com. Jourolmon: They do show the present trend in transportation.

Mr. Swiggart: We thought so in the first six months of 1937 but found out we were mistaken, and certainly the situation now, while no more sound or solid basis for basing any speculative ideas or exercising reasonable judgment [fol. 340] than then, with those guns over in Europe, if a break comes would create a power greater than those in this room could fathom; then that factor, when we come to engage in these facts here, it is almost speculative. When it comes to that term, my argument with respect to that property is there is no basis——

Com. Jourolmon: The tendency for the basis the first seven months income in 1938 indicate it is a much better earning year than 1936 and just a little less than 1937.

Mr. Swiggart: Look at the total revenue for 1938 compared with first seven months of 1936, just \$150,000 short of 1936. By economies such as keeping these shops with 500 poor devils out of work nine months we have kept the operating expenses down, but we have not increased the revenue over 1936, and much below the seven months of 1937; there was an increase in gross revenues in 1937 and now the increase is below 1936 figures, and I don't think anyone would give the railroads any hope now that what-

ever may happen that there is any likelihood of reducing operating expenses ahead.

Com. Jourolmon: You were referring to railway operating revenues?

Mr. Swiggart: Yes sir.

[fol. 341] Com. Jourolmon: The first seven months of 1938 is higher than 1935, higher than 1933, higher than 1934; the only two years that exceeded it was 1937 and '36.

Mr. Swiggart: I don't have that figure, your honor, you did hand it to me awhile ago and I thoughtlessly handed it back.

Now, our proof shows by affidavit of Mr. McKeand, to test the railway's business by partial year's report, and I think that is true, there are so many things in the way of variations and all, and you will find that variation arises between various railroads; northwestern roads have a big rise in the wheat season, and in our railway it is difficult to expect any particular time.

Com. Jourolmon: I know the first three months are terrible. That is true of most roads. Those were the three months figures the commission had before us at the time of making the assessment, and at that time it appeared the roads were in much worse condition than they are now. Your figures showing the first seven months show a tremendous recovery, in other words, revenues, both gross and net, over the period from April up to and including July must have been much higher than the period the first of [fol. 342] the year to recoup what had been lost the first three months.

Mr. Swiggart: I doubt that is true, your honor. I expect that was reduction in operating expenses and deferred maintenance. Of course, in 1937 at the end of the 7 months period we showed a corporate income of \$100,000 against a corporate deficit in 1936 of \$200,000, yet we would up the year with a deficit of \$400,000. I don't think any such cataclysm is going to result this year. I don't know, there is some hope it will not, except the war scare, the stock market thinks it is destructive of business—

Com. Jourolmon: Experience in past wars is that business booms.

Mr. Swiggart: I don't think we are going to have that now. Of course, we are indulging in a great deal of prophesying now. I want to finish explaining this—

Com. Jouroimon: Yes sir. I was thinking, and that is the reason I interrupted. I am sorry I did. I thought it better to get it in mind while I was thinking of it.

Mr. Swiggart: In this fourth column, the income from non-operating physical property, which shows an average of \$64,000 a year. Now the fifth column is statement of tax accruals on property which produces that income. That is [fol. 343] the only income figure on the sheet from which tax has not been deducted. It is never proper to capitalize taxes. We thought it was proper, it is proper to deduct from \$64,000 taxes actually paid for that year, over \$50,000. The sixth column is items that should not have been stuck in this exhibit, but we stuck it on there to show how bad we were. Net income so as to include item of \$4920.58 arises from rental of operating property without any deduction of any nature. Then we have deducted from non-operating property tax paid on that property, no depreciation, just the gross less taxes, which leaves \$13,747.28. Now we have added all that together and get an average for the seven-year period income from all property, except that which we think is non-taxable, of \$961,277, and that is the figure which, capitalized, gives the system valuation of \$16,021,000, which I have referred to a number of times in the brief and exceptions. Now, we have not included in that statement income from any interest bearing securities or corporate stocks. It is our view and construction of the Tennessee Income Tax Law that no such property is subject to ad valorem tax in Tennessee. If that be true, it seems to me it would not be proper to include income from that property in an aggregate figure which capitalizes the measure [fol. 344] of system value. I hope the commission follows me on that deduction. So our insistence is this income statement over a seven-year period, and if inclusive of 3, 4, 5, 6, or 7 years, is more favorable to us, by reducing the average, which we do not think it is, except five years would be a little larger than seven years, then we insist first, you have previously taxed us on basis of seven years the last two bienniums, and the hazard of error is not increased by including seven-year period rather than a five-year period.

Com. Jouroimon: May I ask Mr. Hendley, I did not understand this year we took under consideration those things.

Mr. Hendley: My idea was those things were put in the

brief simply to show what the road was doing, and show, first, what the figures were and previous assessment, and making the new assessment we would base it on previous years' earnings, and you would know then by comparing the current earnings with previous earnings. They were put there not to be considered in making assessment today, but to show what earnings were on previous date.

Com. Jourolmon: By making comparisons?

Mr. Swiggart: Then we are mistaken. Anyhow, giving us this comparison, that you had been considered those [fol. 345] elements—I don't mean to be impatient about it—but I think we should be given a report as nearly as possible what the comparison was. When you put in there statement of our net income from the two preceding bienniums we inferred you were basing the assessment on that test. However, it doesn't make much difference about putting in five or seven years average.

Com. Jourolmon: Judge Swiggart, I think you are still under a misapprehension. We have not done it on basis of the past five-year average, as I understand it. In other words, I have never seen a 5-year average until you pointed it out at this time.

Mr. Swiggart: You put it in here.

Chairman Dufflap: It is in the brief prepared by Mr. Hendley.

Mr. Swiggart: If you have not seen that, you have not known a good deal about what I have been talking about.

Com. Jourolmon: I realize that.

Mr. Swiggart: What I meant to say, I must have been confusing in reference to it.

Com. Jourolmon: I have never seen an average of that. You mean to add these together and compare the averages of seven year periods with averages of other periods?

Mr. Hendley: We have never made it—

[fol. 346] Com. Jourolmon: Your comment on several occasions that we used those figures in order to obtain averages of earnings on which to base value was so different from the method used, I was confused about that.

Mr. Swiggart: I think your honors have straightened me out about that. Understand, I have been confused. It was an inference on my part in referring to five or seven year income statements, that that had been done for the purpose of striking an average, and at least for the purpose of that, and I must say in justification it is difficult for us to reach

conclusions because the report of assessment is a little bit brief, rather than in detail.

Com. Jourolmon: As those figures were originally presented to us, I think probably all of us examined the most recent figures as having greater weight to judge present day conditions and probably examined the average figures to see what the trend was, whether the trend was upward or downward with the company, as justification for reducing or raising the assessment, so that was largely the purpose of having that in the brief, was what I thought.

Mr. Swiggart: So, I will be understood as offering this [fol. 347] statement as an average, in the urgent belief it does provide a satisfactory and the only reasonably accurate guide for ascertainment of system value. If the commission should simply consider our 1937, or the last complete figures, that would be unfair to the State, because the income statement shows over a period of two or three years, expense account shows the amount of business moved in one or two years fluctuated, so if we are not to measure system values that way we offer this seven-year average as figure to iron out this year to year average as a very satisfactory basis for determining system value—

Mr. Hendley: Right there, when you first began to run off and we started reducing your assessment from twenty six million and finally got down to sixteen million, we did not use a seven year average; we used year to year.

Mr. Swiggart: You recognize then as I do now, the years ahead are pretty rocky from all reasonable bases. I have said the earnings, the capitalization method is the only available test for anything like an approximate measure of our system value and, although I have no doubt there are some minor inconsistencies in my brief and statements, as Mr. Commissioner Jourolmon pointed out before dinner, I don't [fol. 348] claim to be consistent in this whole presentation, as I stated before, it has been a very difficult matter, but on this question of consideration of the aggregate market value of stocks and bonds I say it is not available as a guide to valuation, for a number of reasons: the exhibit No. 37 to the affidavit of Mr. Hall is a compilation of stock market sales and prices over a period of seven years, taken from the weekly summaries by the Commercial and Financial Chronicle. I noted in a paper of the National Tax Proceedings a statement from one northwestern tax commissioner, Wisconsin or Minnesota, that they had abandoned the use of

stock and bond quotations in high and low figures and had kept a record of these weekly summaries in the Chronicle as a guide. They can get a better guide there to determine prices of securities, so we got this compilation made up by weekly summaries for seven years of sales of stocks and bonds of The Nashville, Chattanooga & St. Louis Railway. The record shows that since '80 something, over 70%, say 71, maybe 72 or 3—I have some cause to be doubtful about my own accuracy about that—at least 71 per cent of the stock of the N. & C. Railway has been locked up in the treasury of the Louisville & Nashville Railroad Company, figuratively speaking, they have been pledged against their [fol. 349] general mortgages of borrowings of that company, so seventy odd per cent of that stock has been barred from trading for fifty years. These weekly tradings, in only one year, 1936, did the total sales of stock for a year reach 5 per cent of the outstanding issue. In that year, 1936, which as the commission will recall, was a period of active speculation, rise and fall in the stock market, the N. C. & St. L. reached an aggregate of 15 per cent. Obviously, the sale and resale of some certificates according to the flow of the market. Statement in Mr. Hall's affidavit shows from the secretary the average stock sales was about ten shares. The commission will know, although I do not ascribe to much accuracy of the stock market, that common stock priced at a low percentage of par offers an attractive field for speculation. If you can buy N. & C. stock at ten dollars a share and sell in a few weeks at fifteen dollars, as you could have done in a few weeks, and which has been done, you would have made 50 per cent. All low price stocks are subject to that speculation. The point I am trying to make is there has never been any real effort by investors who would weigh the income value of the property—there have been no such investors in this property, certainly not enough to enable the commission to say in its own mind that these little blocks of [fol. 350] stock sold for a certain figure was enough to say what an investor would consider that stock worth from an investment standpoint. Now, the bonds offer pretty much the same picture. In 1931, 1½ per cent of the issue was traded in, that resulted up to a maximum of three per cent in 1934, except for the year 1936 when 10 per cent of those bonds were traded in. Now, against even that, the commission looking at the present situation would find that the present prices of those securities, that is bid and asked prices,

are very much below others shown on that exhibit. On Saturday, The Nashville, Chattanooga & St. Louis Railway stock as quoted by the Wall Street Journal, ten shares was sold at \$13.75 a share. A little more comprehensive statement of the bond transactions from the Commercial and Financial Chronicle, September 10th, that was Saturday, range in value for the year down to 50 and 68, 50 low and 68 maximum. Two bonds were sold on last Friday at 67.

Mr. Hendley: How about the 10th of January?

Mr. Swiggart: Well, sir, you know better about that than I do.

Mr. Hendley: The Financial Chronicle gives 58 and 68. asked.

Mr. Swiggart: That was the maximum for the year. What was the stock?

[fol. 351] Mr. Hendley: I did not get that.

Mr. Swiggart: I think it was 11, the average was 11, the average for seven months, which gives an aggregate of thirteen million dollars. If you are going to consider at all half the L. & N. bonds—— But the point I believe in is simply this, when you look at the stock and bond transactions at all, you are simply substituting for your own conception of value whatever properties the record shows are leased; and when you do that, there is no satisfactory guide to this commission as to value of this property. Now, the financial set-up of the structure of this company involving lease of a third of the system properties I have been discussing in the brief to show if you are not going to take as a measure of system value, if you are not going to take the securities issued by the N. C. & St. L. corporation, then if you are going to speculate and guess how much bonds or stock the State of Georgia might issue on its road, if operating independently, then you have in your calculation another hazard of error which seems to destroy the amount created by it. As I say, if you take the P. & M. and W. & A., separately, then you are dragging from the N. & C. System proper, that is their own properties, a valuation which there is not any known method of separating as between the three prop-
[fol. 352] erties. We have offered figures to show the fact that considered independently, if operating independently and they simply getting a division of the other operations and keeping their local business, the income yield of these properties would be far less than the rental obligations that the N. C. & St. L. acquired way back there in 1896 when

everything looked good, and was good, from the standard. Now, there is no way to gauge the effect on the value of the N. C. & St. L. proper if you were to take away from the corporation these roads and rental obligations. The whole business of the road is predicated upon many years operation as a unit: its traffic flows according to the goodwill acquired through the operation of these three properties as a single system. There is no way to segregate values as between these three properties in determining its system valuation. If you were to deprive the N. & C. of these roads, if you were to say—if the government were to say, for instance, in some fancied attempt that might be scraped up, these rentals are excessive based on present revenues and therefore let them be operated separately, then you would take from your own properties its entry into Memphis on the one hand and Atlanta on the other, and you decrease us on account of the nature of these properties, on account of the [fol. 353] character of securities and nature of dealings it has, and we earnestly insist certainly there is nothing in this stock and bond method which would justify this commission adding anything, any substantial amount to the value measured by the capitalization of the present net income.

I wanted to talk something about this question of allocation—

(Thereupon commission took a short recess.)

Chairman Dunlap: Judge Swiggart, I just, during the recess, in going over a few figures here, and have in mind what really is concerning the road at this time are the cumulative deficits— You have charged in 1937, \$515,166 as a cumulative deficit to your operating expense—

Mr. Swiggart: I don't see how that could happen.

Chairman Dunlap: I didn't mean cumulative deficit—I mean depreciation.

Mr. Swiggart: I beg your pardon.

Chairman Dunlap: And in 1938 for the first seven months you have charged in there \$302,749. Now, Judge Swiggart, if you have in the bank cash— How much now, do you know?

Mr. Swiggart: I expect about a million and a half dollars.

Chairman Dunlap: It is between two and three million dollars, isn't it?

[fol. 354] Mr. Swiggart: I will look and see. I will give it to you as of January 10th, here—As of January 10th there was \$1,060,000 certificates of deposit and \$436,000 cash in Tennessee; outside Tennessee there was a half million dollars. That is two million dollars.

Chairman Dunlap: How many government bonds have you got?

Mr. Swiggart: Well, we have \$600,000—deposited for security of W. & A and about seventy thousand, no, about a million dollars in addition. Of course, the reason we have not borrowed money during the depression to take care of these deficits the road has been permitted to keep these nest eggs for operating.

Chairman Dunlap: I was not speaking of taxable properties but for emergency, however, which seems to you, concerns you, and I appreciate that you have been accumulating these deficits. In 1936 you showed \$51,000, then in 1937 you went back to \$471,000 deficit: however, for the present months you are showing a little better than I believe you were back prior to that, and in 1936 and '7, when we reduced your property \$500,000, at that time, the last assessment, I believe, the road is in better shape now than it was then.

Mr. Swiggart: Of course, this continued succession of [fol. 355] deficit years is a cumulative drain on reserves and value of property. I hope your statement is true that it is in better condition now. I don't think so; I hope so.

Chairman Dunlap: I am not prospecting on that, I mean up to the present time, the trend up to the first seven months of this year.

Mr. Swiggart: I am afraid if that is true that the financial condition is better.

Chairman Dunlap: I am going back to the position you took.

Mr. Swiggart: I am afraid it is the result of not going back and making improvements, notwithstanding revenue conditions did not justify it and deferring improvements which would have created taxable values and in the future will create taxable values, if we can make them.

Take all those bridges the evidence shows need repairs so badly; take the shop structures and buildings that need modernizing and enlarging, which cannot be done in these years. It seems to me the reason for much of this evidence

is the commission can see for itself for many, many years, with a great deal of improvement in traffic and revenue conditions, how many years before this property can be said [fol. 356] to be on a profit-yielding basis. I think all these conditions should be considered by the commission. The fact that deficit conditions have lasted so many years give them an accumulated effect far above that they would have been entitled to if they had been in spurts as they went along.

Chairman Dunlap: I appreciate that.

Mr. Swiggart: Now this depreciation accounting the gentleman speaks of—The Interstate Commerce Commission has field men that visit the property at periodic intervals; they check all retirements; check all additions and betterments physically to see if they are there, they check all depreciation accounting. I think unless this commission assigns reasons which may be investigated, we are entitled to have this commission to accept the inspection and supervision of the Interstate Commerce Commission, their approval of these depreciation accounts as being fairly commensurate with depreciations actually experienced. I don't think those accounts should be questioned in this proceeding unless done specifically and in such way counsel may admit false or sustain them one way or another. I did not do that because up to date no attack has been made on that plan by the commission and we had no reason to assume the commission is [fol. 357] questioning the validity of this—

Chairman Dunlap: No, we are not.

Mr. Swiggart: I don't think I care to take up the time of the commission further except on this question of allocation to the State, and I recognize the fact that so many years allocation has been made strictly on a per mile basis, but the authorities seem so clear that that basis produces an unjust result or a result of bringing into the State values, values that are not there, no taxable values there, or it is arbitrary, and it seems to me the result reached here, the allocation of revenues between Tennessee and other states made in tax returns, they are very interesting and they gave me a good deal of study. The operating ratio for Tennessee is less than that for the system, and by indicating certainly a very fair, at least an intention to be fair on the part of this respondent for the allocation in making their assignments of revenue and expense to the State, but it so happens there are two items of income and expense that

destroy the result or bring about that disastrous result in mileage—those two items are Joint Facility Account and the Hire of Passenger and Freight Car Accounts.

It so happens in the States of Georgia and Alabama, particularly, that we have property which other railroads desire to use, that property being included in this system. I have made up an excerpt to bring the items closer together than appear in the regular income statement. May I hand them to the commission, which go far toward explaining why when you get down to the net result, with a mileage of 71 per cent of the system, the State of Tennessee realizes a net railway-operating income of only 51 per cent of the system income. Now, this first pair of items shows under the total credit the income from the rent of operating properties, system total of \$311,000; now, against that we pay other railroads \$122,000 for use of their properties as joint facilities; these facilities are not assigned to states, they occur interstate. With a great many cars in the States of Alabama and Georgia that move over in Tennessee, our income from that source is \$83,000, but we incur an expense of \$112,000, which leaves a debit for Tennessee of \$29,000. A good part of that is made up of rent we pay the Memphis Union Station Company, which is otherwise taxed, the property is, and otherwise rental to the L. & N. property of the Nashville Terminals, and other items. In other states the income to be credited from that source is \$228,000, whereas we rent joint facilities and pay out rents [fol. 359] in other states only \$9,000, which leaves a net credit to other states from joint operation of \$218,000; that is a deficit in Tennessee of \$29,000 and a credit income to other states of \$218,000. Some railroads are creditor railroads, that is, equipment hire and car hire; others are debtor railroads. Ours is a debtor railroad. A great deal of our traffic is perishable, that is, fruits and vegetables from Florida and part from the Southeast. Practically all of that is in private cars and we pay on that equipment at a daily rate approved by the Interstate Commerce Commission. Naturally in that sort of situation where the railway is using more cars it hires than other railroads hire from it within the state, the entire mileage exceeds its creditor portion of car balance. That car hire we pay out and car hire we receive from our cars is allocated according to car miles; that is, if a freight car, number of car miles, cars in Tennes-

see we get that revenue. We figure to make it as short as possible. It shows for the entire system a deficit of \$289,000; Tennessee's share of that deficit is \$195,000, and other states' share \$94,000. That is about 68 per cent to Tennessee and the balance to other states. The net result of these two items alone in the income account is a deficit to the State of Tennessee of \$224,000 and a credit to the operations [fol. 360] outside Tennessee of \$124,000, a difference of \$348,000 in net income against Tennessee operation from these two items alone.

Now, I think it proper to say to the commission that the apportionment of taxes results in further influence against Tennessee's net railway operating income, for, since we pay no ad valorem taxes in Georgia, as such, the result is 81 per cent of our tax bill is chargeable to Tennessee, and that represents Tennessee's share of net railway operating income. Now, if the commission should think some adjustment should be made for that, that is, since we concedingly pay Georgia taxes, although we pay it as rent, it would be taxed if any body owned it except the State of Georgia, if the commission can reach a satisfactory figure that would measure our taxes in Georgia, it is perfectly satisfactory to us to be added to the total tax bill in this computation, which would reduce the ratio of tax bill in Tennessee, but if you do that you would be required to make a deduction from the system income, you would have less income; Tennessee's proportion would be larger, but the total would be smaller. I have not made that figure; I don't know what figure would be justified in using for Georgia. If we had paid Georgia in 1937 on the same per mile valuation of [fol. 361] W. & A. that you valued the 15 miles in Tennessee, that is, \$37,000 per mile, and the county tax rates had been the same, it would have been about \$150,000, but that would not include anything for taxes on the localized property in Georgia. I think that would be purely distributable property. I think on the localized property, to be fair, if you make that computation to take \$200,000 for Georgia as tax bill, if we had to pay it, not having to pay it, our net operating income is higher than it would be if we rented from a private citizen rather than the sovereign state; the net result, as I see it, without repeating again the unit figures, the traffic deficit in Tennessee on account it seems to me the 51 per cent income in Tennessee against 71 per

cent, convicts the allocation of prorated mileage ratio as grossly unjust. I don't know if the court would care to hear any further discussion whether the commission is bound by the statute to confine its allocations to the mileage basis. I have said what I would otherwise say in the brief which I handed to the commission. I think it clear that the commission should adopt a construction that would leave its hands free rather than tie its hands to a per mile valuation. That in some cases will work an unjust result, and whenever that is done it will work an unconstitutional result.

[fol. 362] If any additional evidence is desired, I would be glad to put our accounts and others before the commission.

Mr. Hendley: Judge Swiggart, with reference to allocation of mileage in and out of Tennessee, I want to read you from a decision of the Supreme Court of Tennessee, *Railroad v. Bate*, which you briefed:

"A railroad company owning one road may purchase or lease other roads, and still as to each it must be governed by the same rules as were the original owners. It simply takes the place of the original owner or lessor, and stands upon no better ground. The fact that the road bought or leased is a continuation, or rather an extension of the original line, can make no difference. For instance: The Nashville & Chattanooga Railroad was chartered to one company, and the Nashville & Northwestern to another, both roads are now owned by one company, and make one direct line from Hickman in Kentucky to Chattanooga in Tennessee, yet as they originated under separate charters they must be treated for taxing purposes as separate roads. They are entitled to the advantages, and must submit to the burdens of the addition."

[fol. 363] Having that mandate from the Supreme Court in view, this commission asked the N. & C. Railway to break down its revenues and expenses of each kind on each division forming any part of the N. & C. System, which they claimed they could not do, due to the manner in which their books were kept. Why would it not be perfectly legitimate now for this commission to assess the Paducah & Memphis as one separate unit and the W. & A. as another separate unit? Take, for instance, the Paducah & Memphis, I understand the L. & N. bought that to head off competition—

Mr. Swiggart: It was a foreclosure sale.

Mr. Hendley: They paid for it in 4 per cent bonds and immediately leased it to the N. & C. for five per cent, and I notice in your statement to the stockholders that you spent a few million dollars on leased property, which it is my understanding you not only pay the L. & N. five per cent on value of the railroad at the start—

Mr. Swiggart: May I explain that?

Mr. Hendley: Yes.

Mr. Swiggart: We had the option, as I understand the situation, should the L. & N. pay for all A. & B. it would automatically increase our interest rent, but many years [fol. 364] ago, in view of the fact it was a hundred-year lease, the N. & C. decided it was better for them to pay A. & B. themselves and not increase the rent. For a year or two there was some A. & B. We pay interest rent 5% plus A. & B. That was all in a year or two. Then it became the policy of the N. & C. to pay A. & B. They did not pay 5 per cent to the L. & N.

Mr. Hendley: You are paying five per cent to the L. & N. now.

Mr. Swiggart: Five per cent on foreclosure sale, and A. & B.

Mr. Hendley: The L. & N. paid for that in four per cent bonds.

Mr. Swiggart: I don't know.

Mr. Hendley: Why would not it be perfectly all right for the commission to assess the P. & M. as a separate unit at \$5,000,000 bonds, which is considerably more than we have assessed it?

Mr. Swiggart: The commission has recognized the practical question many years not to literally follow the language of decisions in its valuations. The commission has recognized the necessity of arriving at a value of the whole system and then proceeding backwards to find what, in its discretionary judgment, each should be ascribed as a separate division or corporate entity that went into its entire system. The commission, I think, has recognized the impossibility of segregating this system into units and arriving at a unitary value of each separate unit and taking each into the system as value.

Mr. Hendley: We did that because you did not give the information to do otherwise.

Mr. Swiggart: Mr. Hendley, I think your question doesn't intend to infer we refused.

Mr. Hendley: I said failed, not refused.

Mr. Swiggart: I doubt that you could point out to us, even as skilled in such matters as you are, just how we could overcome this difficulty in accounts down to that basis. The point I tried to make is the reason it would not be fair for the commission to ascribe to the P. & M. value represented by bonds of the L. & N., approximately \$5,000,000, because when you do that you have no possible way of knowing how much of that five millions to subtract to go to the balance of the system. It is too closely unified. The P. & M. value of the Memphis entry means too much. You have no way of applying that part to the system property. The only practical way has been pursued.

Chairman Dunlap: However, in conformity with the de-[fol. 365] cision, in sending out interrogatory we always ask that be included.

Mr. Swiggart: Thank you.

Mr. Hendley: Income, stock and bonds value, we add the actual bonds resting on the property. You say that should not be added.

Mr. Swiggart: I say there is no way of arriving at present value of these bonds. I think the mortgage bonds, I think they are paid.

Mr. Hendley: No, they are premium—\$4,619,000.

Mr. Swiggart: The value of these bonds, market value, follows L. & N. bonds. They are general obligations. You cannot segregate the value in market, because the L. & N. is the obligor.

Mr. Hendley: The idea is, we deducted the value of those bonds from the L. & N. bond value and added them to your bond value, and you say they should not be added.

Mr. Swiggart: I gave my reasons.

Chairman Dunlap: Judge, we appreciate your presentation.

Mr. Swiggart: I have enjoyed the day myself.

Chairman Dunlap: We will take the matter under consideration and come to a conclusion within the next few days.

[fol. 367] Mr. Swiggart: If there are any questions in the accounts, I would appreciate Mr. Hendley letting the accountants come up.

Chairman Dunlap: If the commission wishes any further information than that presented, we will do that.

Com. Jourolmon: Judge Swiggart, if this matter goes up on this, there is one thing I would like to have incorporated in this record. I am not going to take the time to burden us by reading it, I am going to pass it to you so you can be fully advised of something—

Mr. Swiggart: Has it been presented to the other members of the commission?

Com. Jourolmon: No sir; they are probably familiar with it, as soon as I make my statement. On June 8, 1938, just a few months ago, Mr. Earl J. Roach, assistant to vice president, N. C. & St. L. Railroad, and I believe, traffic manager, was before the commission testifying on tax matters in a cause involving motor carriers—

Mr. Swiggart: Tax matters or rate matters?

Com. Jourolmon: It was an application for certificate of convenience and necessity he appeared in and introduced the question of taxes, and at that time he was cross-examined with reference especially to taxes of the N. C. & [fols. 368-369] St. L. Ry., and it is in this record; it begins at page 2429, and runs about eleven or twelve pages, and this being docket MC No. 1703. In the course of that Mr. Roach was examined with reference to comparative taxes on certain motor carriers and the railroad, and in view of the fact in your brief you aver certain inequalities of taxation I thought the testimony that was brought out at that point was quite pertinent, and I think you should look it over, and if you have anything you would like to bring out on that point, the commission would be glad to hear you.

Mr. Swiggart: Thank you. I suppose there is no haste about that?

Commissioner Jourolmon: Mr. Whitwell possibly has that. He was representing the N. & C. in that matter.

Chairman Dunlap: All right. We will stand adjourned.

(Thereupon the commission adjourned at 3:20 p. m., Sept. 14, 1938.)

[fols. 370-371] EXHIBIT NO. 4 TO BILL OF EXCEPTIONS

BEFORE THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF
TENNESSEE

In re Valuation of the N., C. & St. L. Railway for Purposes
of Taxation, Years 1938-1939

AFFIDAVIT OF FITZGERALD HALL

[fol. 372] Before the Railroad and Public Utilities Commission of Tennessee, ex officio tax assessors for railroad property, in relation to the protest of The Nashville, Chattanooga & St. Louis Railway against the assessment made by said Commission for ad valorem taxes in Tennessee for the biennium 1938-1939.

Affidavit of Fitzgerald Hall, President, The Nashville, Chattanooga & St. Louis Railway.

STATE OF TENNESSEE,

County of Davidson:

I, Fitzgerald Hall, being duly sworn, state as follows:

I am President of The Nashville, Chattanooga & St. Louis Railway, and have been since Nov. 30, 1934. Prior to that time, from May 1, 1915, I had been in the Law Department of the N. C. & St. L. I am giving this testimony in support of the protest filed on August 31, 1938 on behalf of the N. C. & St. L. against the assessment by the Railroad & Public Utilities Commission of Tennessee for the biennium 1938-1939 as served on said Railway on August 22, 1938, and in support of the claim of that Railway that its assessment should not exceed the taxable value reported in the formal tax return as filed by it on March 17, 1938, reduced to 66 $\frac{2}{3}$ per cent, which a careful survey indicates is about the average ratio of assessed value to actual cash value of tangible properties in Tennessee.

I am perfectly willing to be cross examined at any time in connection with any matter set forth herein or to obtain, [fol. 373] as far as possible, any other data the Commission may request.

I

Initially, the return as filed by this Railway undertook to give, as of January 10, 1938, the fair cash value of the property of the N. C. & St. L. subject to ad valorem taxes

within the State of Tennessee. This figure does not represent the investment in these properties; it does not represent what they cost; it does not represent what it would cost to reproduce them, less depreciation; nor does it represent the rate-making value of these properties; nor, I hope, does it reflect what will be the N. C. & St. L.'s value in future years.

There is nothing novel or unusual about property being worth at a given period a great deal less than cost, just as often it may be worth much more than it cost. I give certain examples in Tennessee and Georgia to show what certain developments cost, what they later sold for, and what they are currently assessed at, as follows:

The Harry Nichol Building, situated on the corner of Fourth and Union Street in Nashville, Tenn., was constructed during the years 1922 and 1923 at a cost of \$410,000.00 for the building alone, it being located on leased land. In 1925 it was assessed by Davidson County at \$400,000.00. In 1935 the building was sold by the bondholders for the sum of \$60,600.00, and in 1937 (although in good physical condition) it was assessed by Davidson County at \$150,000.00.

The Independent Life Building, situated on the corner of Fourth and Church Street, Nashville, Tenn., was constructed during the years 1907 and 1908. The value of the building and land as per declaration of trust—Standard Life Insurance Company of the South relative to assets of the Independent Life Insurance Company of America as filed in Chancery Court, Part I, Davidson County, was \$575,439.11. In 1929 this property was assessed by Davidson County at \$500,000.00. In 1936 the building was sold to the Third National Bank for the sum of \$270,000.00. In 1937 the property (building and land) was assessed at \$350,000.00.

The Lookout Mountain Hotel, situated in Dade County, Georgia, was constructed in 1927-1928. The building cost \$1,000,000.00, equipment \$165,000.00, swimming pool \$20,000.00, 168 acres of land \$50,000.00, making the total cost \$1,235,000.00. In 1930 the county assessment was \$375,000.00. In 1935 this property, including furnishings, was sold for taxes to W. D. Gillman and Associates, the sale price, including attorney's fee, being \$27,250.00. In 1936 the property was assessed at \$50,000.00.

The Hurt Building, situated at Edgewood and Exchange Streets, Atlanta, Ga., was constructed in two units, the first in 1912, the second in 1923-24. The total cost of building and land was \$4,500,000.00. In 1926 it was assessed at \$1,275,148.00. In 1935 it was sold through the court for the sum of \$2,281,000.00. In 1936 it was assessed at \$1,370,019.00.

The Sterick Building, situated on Madison Street in [fol. 375] Memphis, Tenn., was constructed in 1928-1929 at a cost of \$2,600,000.00 for the building alone. In 1931 the county assessment on the building and land was \$1,260,000.00. In 1932 it was sold (although in excellent physical condition) at foreclosure for \$1,200,000.00.

II

To better appreciate the situation of the N. C. & St. L. it seems proper, first, to consider the general transportation situation, with which the fortunes of the N. C. & St. L. are inevitably intertwined.

(a)—Attached hereto, marked Exhibit No. 1 (a), (b) and (c), is a compendium of the financial results of operation of the principal American railroads, including the N. C. & St. L., for the month of January of the so-called boom years of 1928 and 1929, the original depression years of 1931 and 1932, and the present depression years of 1937 and 1938. These figures, accurately compiled by an agency of the American railroads from data furnished the Interstate Commerce Commission, give an accurate and clear picture of the general financial results of railroad operations in this country for the periods mentioned.

(b)—It has been the law since approximately 1920 that, with immaterial exceptions for industrial sidings, etc., no railroad could build or extend its line without the approval of the Interstate Commerce Commission. There has been no similar restriction on the construction of facilities for [fol. 376] highways, air lines, pipe lines, or inland waterways, all of which are used by various agencies of transportation in the solicitation of public business in competition with the railroads generally, and of the N. C. & St. L. in particular. In the last twenty years public authority has spent on public highways and bridges, other than city streets, in

this country approximately \$28,000,000,000.00 for construction, as distinguished from maintenance. In the same period Tennessee and its counties (omitting municipalities) have spent approximately \$404,000,000.00. In the same period pipe lines have spent \$773,743,000.00, and government, and its subordinate agencies, and private companies, have spent for air facilities \$800,000,000.00, and for inland waterways \$1,900,000,000.00. There is included in the above sums expended for air facilities and inland waterways nothing for properties used exclusively by the Army, Navy, or Marine branches of the federal government. The latest available data for motor vehicle registration are for the year 1937, and as of that date there were registered in the continental United States 4,255,296 trucks and 25,449,924 passenger automobiles. For the same period 58,736 trucks and 341,648 passenger automobiles were registered in the State of Tennessee.

In some states buses are included with passenger cars, and in others with trucks; however, a census conducted by "Bus Transportation" shows that in 1937 there were 127,581 buses in the United States and 1981 in Tennessee. There [fol. 377] are in the continental United States 533,144 miles of highway which constitute the State Highway and Federal Aid systems, and 2,535,777 miles of so-called secondary roads. The comparable figures for Tennessee are 7,446 miles of State Highway and 62,191 miles of secondary road.

All the lines of the N. C. & St. L., in Tennessee and elsewhere, are now paralleled by excellent highways, frequently in sight of the railroad right-of-way, over which moves commercial traffic which the said railway might handle.

(c)—Attached hereto, marked Exhibits 2 (a) and 2 (b), are maps showing the highways of Tennessee as prepared by the State Highway Department, and traffic density studies of the principal highways in Tennessee, made by the State's own Highway Department, showing the tremendous volume of motor vehicular traffic in this state.

(b)—Attached hereto, marked Exhibit No. 3 (a), (b) and (c), are three booklets entitled (a) "Bus Facts for 1938," (b) "Motor Truck Facts—1937 Edition," and (c) "Automobile Facts and Figures—1938 Edition," compiled by responsible authoritative organizations. These are included to show the tremendous factor in our economic life and in

the transportation field now being played by motor vehicles of all kinds.

(e)—Attached hereto, marked Exhibit No. 4, is an excerpt and picture taken from "Business Week" of July 16, 1938, showing a typical development of truck terminals in one of our larger cities. Counterparts, in various sizes, exist in the territory served by the N. C. & St. L. I also attach, [fol. 378] marked Exhibit No. 5, a general description of truck and bus operations along the line of the N. C. & St. L. Railway.

(f)—Attached hereto and made a part hereof, marked Exhibit No. 6, is an accurately compiled study of motor vehicles operating in the four states which the N. C. & St. L. serves, namely, Tennessee, Alabama, Georgia and Kentucky.

(g)—Under date of May 8, 1937, the United States Department of Commerce issued an elaborate study entitled "Motor Trucking for Hire." The figures therein are for the year 1935. Since that time motor trucking has increased, but in 1935 there were in the State of Alabama 799 concerns trucking for hire, operating 1,650 vehicles, collecting from the public for this service the sum of \$3,117,000.00.

In Georgia there were 886 such concerns, operating 1,820 vehicles, collecting from the public \$3,487,000.00.

In Kentucky there were 2,680 such concerns, operating 4,661 vehicles, collecting from the public \$9,547,000.00.

In Tennessee there were 1,674 such concerns, operating 3,269 vehicles, collecting from the public \$8,599,000.00.

These figures include only the "For Hire Trucks," that is, those transporting other people's goods for a price. These figures also are limited to those concerns which in the year 1935 received as much as 50% of their gross revenue from motor trucking for hire, and include only those companies having headquarters in the states named.

(h)—In recent years the growth of transportation by air has been remarkable, all of it in competition with the American railroads. Attached hereto and marked Exhibit No. 7 is a map of civil airways of the United States, prepared and published by the United States Department of Commerce.

Attached hereto, marked Exhibit No. 8, is an accurate study of the airports in direct competition with the N. C. &

St. L., handling mail, passengers, and express, which might move by not only railroads but by the N. C. & St. L. in part. To show the rapid growth and importance of this industry, I attach hereto, marked Exhibit No. 9, the Air Commerce Bulletin, prepared by the United States Department of Commerce, dated May 15, 1938.

From a similar bulletin, dated January 15, 1938, the United States Department of Commerce, at page 169, gives certain operating figures for the month of September, 1937. In that one month commercial airplanes carried 130,296 passengers and 720,479 pounds of express. The express pound-miles flown in that one month reached the stupendous figure of \$437,292,739. Until a few years ago practically all express moved by railroad.

From a similar bulletin prepared by the United States Department of Commerce, under date of June 15, 1938, I quote the following from page 306:

“Domestic Air Transport Lines Carry 104,661 Passengers in April, 1938.

The 17 scheduled airlines operating in continental United States in April, 1938, carried 104,661 passengers, and flew 5,621,818 miles and 44,412,815 passenger-miles, according to reports to the Bureau of Air Commerce, Department of Commerce.

The lines carried 497,225 pounds of express and flew 299,887,923 express pound-miles during the month.

Comparisons with February and March, 1938, and April, 1937, are shown in the following:

[fol. 380]

	February 1938	March 1938	April 1938	April 1937
Companies operating	17	17	17	20
Companies reporting	17	17	17	20
Passengers carried	73,563	94,112	104,661	76,199
Express carried (pounds)	421,326	558,113	497,225	540,310
Express pound-miles flown	271,262,351	346,309,637	299,887,923	321,929,629
Miles flown	4,560,887	5,549,469	5,621,818	5,350,093
Passenger-miles flown	34,387,696	43,548,986	44,412,815	33,136,248
Available passenger seat- miles flown	59,282,991	71,992,645	74,856,484	62,762,041
Passenger load factor (percent)	58.01	60.49	59.33	52.80

(i)—Pipe lines for the transportation both of petroleum products and natural gas now transport vast quantities of materials which formerly moved either directly or in the form of coal by railroad. An official map showing the latest

development in pipe lines is attached hereto, marked Exhibit No. 10.

According to a report "Mineral Resources," prepared by the U. S. Bureau of Mines, 132,258,000 tons of crude petroleum were produced in the United States in 1931. Annual summaries of the Interstate Commerce Commission show in that year a total of 50,057,018 tons of crude petroleum and products originated on Class I railroads and 75,942,511 tons originating on pipe lines. In 1935, with production of crude petroleum totaling 154,459,000 tons, only 38,938,728 tons originated on Class I railroads, while 119,127,838 tons originated on pipe lines. Preliminary figures for 1936 indicate a further increase in pipe line handling.

(j)—In recent years there has been a decided revival of inland waterway transportation. Attached hereto, marked Exhibit No. 11, is a map of the principal waterways of the [fol. 381] United States, for the year 1936, prepared in the office of the Chief of Engineers of the United States Army. It will be noticed that a substantial portion of this development is in direct competition with the service of the N. C. & St. L. Since that map was prepared, T. V. A. has done a considerable amount of development in the territory directly served by the N. C. & St. L., and the official map prepared by T. V. A. showing this is attached hereto, marked Exhibit No. 12.

The Tennessee Valley Authority made an elaborate report of navigation on the Tennessee River system for the Seventy-Fifth Congress, First Session, and that report was printed as "House Document No. 254." I quote from that official report at pages 148 and 149:

"The completion of this series of dams will not only provide a continuous 9-foot navigation channel of 652 miles on the main stream of the Tennessee, but it will also add about 100 miles of the same type of open channel to the various tributaries of the river (19). These structures are planned primarily with a view to their function of improving navigation, but they are also designed to conserve other benefits from water control and water use, such as flood protection against property damage, water-power development, recreation, and the prevention of stream pollution.

The Authority has made extensive investigations and studies relating to the proper development of navigation

terminals which will coordinate traffic movement on the river with land transportation.

The ultimate completion of the plan for making the Tennessee and its tributaries available for modern navigation lies in the future. Its eventual benefits, therefore, are beyond the scope of this history. In the light of what has been accomplished since the creation of the Tennessee Valley Authority, however, one may venture the opinion that the future citizens of the Valley and contiguous areas will enjoy a type of water-transportation facilities of which their forefathers could not even dream."

Another pamphlet prepared by T. V. A. entitled "The Story of T. V. A.", has some interesting figures on river [fol. 382] traffic, present and potential, in direct competition with the N. C. & St. L., and I quote as follows from pages 8 and 9 of that booklet.

"Traffic on the Tennessee, which had fallen to about 800,000 tons in 1932, has been steadily increasing, and in 1936 was at the pre-depression level of 2,166,000 tons. The figures for 1938 are expected to be the highest in the history of the river.

Preparations for the Future

Various indications are appearing to show that traffic will increase rapidly as soon as more dams are completed. Private companies are buying waterfront sites for industrial plants and water terminals. Inquiries are coming in regarding the prospects for navigation. The signs point to heavy barge traffic in petroleum and petroleum products, grain and grain products, forest products, steel, coal, and coke.

The T. V. A. is making studies of the relation of river transportation to the feeder lines, both rail and truck, that will lead into the back country away from the main river. Sites for publicly owned docks are being acquired with a view to giving the most economical arrangement of terminals along the waterway.

The high dam system of the TVA has important navigation advantages over a series of small dams constructed only for channel control as on the Ohio. There will be fewer time consuming locks and wider pools in which to navigate. The wide pools behind the high dams can take an ordinary flood with a comparatively small change of level, providing a more nearly constant shore line than is to be found along

most rivers. Docks and loading equipment will be correspondingly less expensive.

Experience with other rivers improved by the Government has been generally favorable since the war. The Illinois River traffic has multiplied 10 times in 10 years. The Mississippi system as a whole carried nearly three-times as much tonnage in 1936 as it had in 1920. As the Tennessee will offer better navigating conditions than many other rivers, a large expectation of future traffic would seem reasonable."

T. V. A., regardless of its general merits or demerits on a long range basis, which I do not discuss, is a double threat to the railroad industry, first, by its further development of directly competitive inland waterways to be used by commercial operators without any cost to them (but at tremendous cost to the taxpayers), and, second, by the substitution of electrical energy produced by water power for that heretofore largely produced by coal. This means a vastly reduced amount of coal traffic available to the railroads in general and to the N. C. & St. L. I attach hereto, marked Exhibit No. 13, a study of this situation, prepared by the National Coal Association. The reasonably to be anticipated results of T. V. A. on the coal traffic of the N. C. & St. L., and possibly fertilizer, are set out in Exhibit No. 14, attached hereto.

In addition the proposed construction by T. V. A. of the dam at Gilbertsville, Kentucky, will flood permanently a large proportion of the area now tributary to the area served by the N. C. & St. L. at and near Johnsonville, Tennessee, and will permanently destroy such traffic producing businesses as the large sand and gravel company operated by the Herberts of Nashville, Tennessee, near Johnsonville for many years. The destruction of this plant will also cause an increase in the total cost of ballast used by the N. C. & St. L. Railway.

The vast business now being done both by the government of the United States in its commercial operations on the rivers and by its subsidy to other operators are accurately set forth in Exhibit No. 15, attached hereto, the details being taken from the annual reports of the Chief of Engineers of the United States Army. It will be seen that, eliminating all known duplications, commerce moving on the rivers, canals, and connecting channels in 1936 totalled 276,263,926

tons. How this has affected the N. C. & St. L. already at Nashville, Tennessee, by reason of the movement of petroleum products, is set forth in detail in Exhibit No. 16, attached hereto. It may be observed in passing, as it directly affects the earning power and therefore the fair cash value of the N. C. & St. L., that operators of these boats pay nothing for the use of the locks and dams on the rivers, and the boats and barges themselves are not assessed anything for property taxes either by the City of Nashville, Davidson County, or the State of Tennessee—a deliberate, and I think, inexcusable discrimination against the railroads.

I also attach, marked Exhibit No. 17, an exhibit prepared by Dr. J. H. Parmelee, presented as evidence before the Interstate Commerce Commission, I. C. C. Docket No. 26712. This exhibit, based on official government figures, gives financial and operating statistics of the Federal Barge Lines, American Barge Line, and Mississippi Barge Line, together with tabulations showing volume of freight carried on the Mississippi River, etc.

(k) I attach, marked Exhibit No. 18, a statement prepared by the United States Department of Agriculture entitled "Dairy and Poultry Market Statistics 1937 Annual Summary". Also, marked Exhibit No. 19, a study prepared by the U. S. Department of Agriculture showing "Truck Receipts of Fresh Fruits and Vegetables at 11 Important Markets for Calendar Years 1936 and 1935". These studies show a large volume of traffic formerly handled by rail which now moves by truck. In recent years tremendous quantities of citrus fruit and other products of agriculture regularly move by truck into the territory served by the N. C. & St. L., [fol. 385] thus reducing the traffic of the N. C. & St. L.

I attach, marked Exhibit No. 20, a study prepared by the Interstate Commerce Commission showing "Fluctuation in Railway Freight Traffic Compared with Production". Particular attention is directed to the summary on page 10, which shows that, as compared with the period 1923-25 inclusive, the railroads in 1936 lost a total of 195,735,000 additional tons of freight to competing forms of transportation. On page 13 of this exhibit, it will be noted that these losses are broken down into commodity groups, the percentage losses being as follows: .

Products of Agriculture	16.5%
Animals and Products	37.5%
Products of Mines	11.6%
Products of Forest	30.5%
Manufacturers and Miscellaneous	16.8%
Less than Carload	62.9%

Weighted average loss of all traffic 17.2%

The result is a total transportation machine, built without a coordinated plan, a part of which (railroads alone) is subject to restriction as to construction and part not, so that the transportation plant of the Nation far exceeds, in its potential carrying capacity, either the present needs of the public or any needs that may be reasonably anticipated, even with a substantial improvement in general business.

By reason of the inroads of new forms of transportation (as to which the N. C. & St. L. would have no complaint if they were treated by public authority in the same way it is treated, both as to regulations, taxation, and subsidy), the [fol. 386] N. C. & St. L. plant today is, to a large degree, idle.

The carrying capacity of a railroad is generally considered as being limited by the capacity of main tracks, switch yards, bridges, etc., and the bulk of its investment is in such facilities. It is conservatively estimated that the N. C. & St. L. Railway could handle three or four times as much business, freight and passenger, as it is now handling, with its existing facilities.

However, the result of these new forms of transportation have had an effect far beyond the actual loss of traffic as evidenced by the statement of three members of the Interstate Commerce Commission in a report to Congress (House Document 583, 75th Congress, 3rd Session, page 27), from which I quote as follows:

"The losses of the railroads, resulting from the competition of other transportation agencies have not been confined to the absolute decline in the volume of traffic. To retain traffic it has often been necessary to reduce rates and fares, and these reductions are reflected in declining average revenues per ton-mile and per passenger-mile."

(1) All railroad properties in Tennessee are, and properly so, subject to ad valorem taxation. Other forms of

transportation are either not assessed at all or at figures fantastically inadequate. The regular airplane service in Tennessee today involves the use of at least 15 airplanes, costing on the average from \$70,000.00 to \$100,000.00 each (new ones to be placed in service shortly cost over \$250,000.00 each), on which there is no assessment whatsoever for ad valorem taxes by the State or by any county or city. [fol. 387] Boats on the rivers, particularly those bringing gasoline into Nashville (carrying as much as 2,200,000 gallons per load), in direct competition with the N. C. & St. L., entirely escape ad valorem taxation in Tennessee. Motor vehicles, as far as public records disclose, are assessed for a nominal portion of their actual value. A careful study was made by representatives of the N. C. & St. L. of this situation. The results were tabulated and printed, and attached is a correct statement of that careful and accurate investigation, marked Exhibit No. 21.

This exhibit shows that for the year 1937 taxes assessed against railroads in Tennessee for the general purposes of government amounted to \$2,674,617.12, as compared with the relatively insignificant sums of \$28,492.89 for buses and trucks, \$1,305.02 for boats and barge lines, and \$447.70 for airplanes. Money paid as taxes by the railroads is not used in constructing facilities for the railroads to use in their commercial business as is the case with other forms of transportation, except the pipe lines.

(m) Railroad wages and incidental working conditions, following federal control of the railroads, are subject, in the last analysis and in large degree to governmental regulation. The present situation in relation to such wages, and something of the history of its development, is accurately shown in a pamphlet prepared by the railroads, correct copy of which is attached hereto, marked Exhibit No. 22.

The total wage bill of the N. C. & St. L. chargeable to operating expenses by years, and for the first six months of 1938, together with total revenues and the percentage relationship [fol. 388] of wages to the total revenues are as follows:

Wages
expressed as
percentage
of total
NC&StL
revenues

Year	Wages	Total revenues	
1920	\$17,431,479	\$24,491,175	71.17%
1921	13,228,965	20,924,602	63.22
1922	13,237,973	22,353,763	59.22
1923	14,731,569	24,801,787	59.40
1924	13,628,733	23,601,646	57.74
1925	13,702,393	24,000,050	57.09
1926	13,667,074	24,023,878	56.89
1927	13,063,451	22,905,626	57.03
1928	12,963,845	23,335,033	55.56
1929	12,731,511	23,203,724	54.87
1930	11,518,043	19,317,453	59.63
1931	9,513,909	15,140,254	62.84
1932	7,100,379	11,355,116	62.53
1933	7,240,957	12,381,088	58.48
1934	7,522,098	12,733,701	59.07
1935	7,896,137	12,303,492	64.18
1936	8,512,881	14,145,656	60.18
1937	9,006,060	14,299,433	62.98
1938 (6 Mos.)	3,974,759	6,621,268	60.03
Total	210,672,216	351,938,745	59.86%

(n) The number of passengers moving one mile by rail and the number of tons of revenue freight moving one mile by rail, for all Class I railroads, for the years 1920-1937 inclusive, are accurately set out in Exhibit No. 23 attached hereto.

Similar figures for the N. C. & St. L., including the first six months of 1938, are accurately set out in Exhibit No. 24, attached hereto.

(o) Perhaps this general phase of the transportation situation as a whole can best be concluded by quoting from an address made by the Honorable Joseph B. Eastman, a member of the Interstate Commerce Commission, before the Harvard Business School Alumni Association at Cambridge, Mass., on June 17, 1938, wherein he gives general facts and [fol. 389] figures on the important transportation problems.

"In the early days of this country, the natural waterways furnished the chief means of transportation, a fact which is reflected in the location of most of our larger cities. This was followed by a period marked by construction of canals and other artificial waterways and of turnpike and like highway systems. Then the steam railroad appeared on the scene, and almost at once became the transportation monarch. For many years it held almost undisputed sway, until what may be called the new era in transportation began

something like 20 years ago. The characteristics of this new era were the return of the highway, after the lapse of about a century, to a high place in the national transportation system, owing to the extraordinary development of the automotive vehicle; renewed interest in and construction of artificial waterways; great expansion of pipe lines as a means of transporting certain important commodities, and the birth and rapid growth of carriage by air.

Our National policies with respect to transportation have never been wholly consistent. For the most part we have depended upon private enterprise for the actual carriage and, in the case of railroads and pipe lines, also for the way over which the transporting is done, but after some early experience with private turnpike companies, we now depend exclusively upon public enterprise for the construction and maintenance of highways, and this is largely true of artificial waterways and of the ground facilities which air carriers use. Public regulation of transportation has developed from a zero stage to a very comprehensive system, and in the process of development has taken many different forms. Two policies, have persisted from the beginning and with a remarkable degree of consistency, and they have a most important bearing on our present transportation problems. One is that the country has always craved, encouraged, and given very positive aid to the development of new means of transportation. The other is that it has always craved, promoted, and protected competition in transportation.

At present our railroads are desperately sick, financially speaking, and are the subject of general and grave concern. All manner of reasons are offered for this condition, but the two essential reasons are in fact quite simple and clear. In the first place, the country is suffering a severe business depression. Such a depression is immediately reflected in railroad traffic, especially when it acutely affects the capital goods industries, as the present one does. Freight is by far the most important part of railroad business, and the roads cannot move freight unless other industries have it to ship. In 1936 and the first half of 1937, traffic had by no means regained the level which it reached in 1929, but was moving in encouraging volume. In the fall of 1937, however, it took a nose dive from which it has as yet made no recovery.

[fol. 390] In the past the railroads have encountered financial depressions and have suffered, but never as severely as

they are now suffering. Again the reason is plain. In this new era, the railroads are meeting a competition from other forms of transportation which is far more pervasive and serious than they ever met before. In the old days the railroads could count, with the growth of the country, upon a corresponding and rapid growth of traffic which depressions might interrupt but could not check. They cannot count on such growth now, and they have a transportation machine built for a volume of production which far exceeds the present demand.

Let me give you a few illustrations of what has happened, out of many which could be given. Most of you, I presume, are familiar with the Old Colony Railroad, now a part of the New Haven system, but once an independent railroad serving Boston, Providence, and the southeastern section of Massachusetts, and having a very fine boat line from Fall River to New York. The Old Colony was well managed and was financed honestly and with the utmost conservation; and it prospered. The New Haven, when it leased the Old Colony, was quite willing to guarantee 7 per cent dividends on its stock. The prosperity came from a fine passenger business in a thickly-settled territory, and from a good volume of freight, mostly high-grade and paying relatively high rates. The Fall River Line did an equally good business to and from New York.

Now the Old Colony is so poor an earner that in the bankruptcy proceedings the New Haven bondholders have asked that it be lopped off from the system. What brought about this result? Is it because the Interstate Commerce Commission and the Department of Public Utilities of Massachusetts have refused to allow the Old Colony to charge high enough rates and fares? You know that is not the reason. The fact is that the private automobiles and the busses have taken much of its passenger business, the trucks have taken much of its high-grade freight, and in addition to the highway competition, the Fall River Line has suffered from the competition of a boat line between Boston and New York which has been favored by the construction of an artificial waterway across Cape Cod.

Consider the passenger business of all the railroads. It has been decimated, primarily by the private automobile and secondarily by the bus. Those who think that increases in the rates of the railroads will solve their troubles may reflect upon the fact that the Interstate Commerce Com-

mission permitted increases in coach fares up to 3.6 cents per mile, sanctioned the Pullman surcharge, and protected both for 16 years while the traffic fell off every day. Finally the western and the southern railroads saw the folly of this course, and cut the fares voluntarily; and a little later the Commission forced the eastern railroads to take a similar step. The resulting increase in traffic more than offset the cut in fares, but nevertheless the railroads are not much more than covering out-of-pocket expense on their passenger business, if they are doing that. The coach fares are [fol. 301] as low as, or lower than, they were before the World War, whereas the cost of doing business has greatly increased.

Citrus fruit traffic from Florida has for many years been an important and lucrative item of railroad business. A few years ago the growers began to haul the fruit to Florida ports, from which it moved by refrigerated vessels to the great northern port cities, Boston, New York, Philadelphia and Baltimore. To meet this diversion, the railroads have been forced to make deep cuts in their rates to those cities, yet they have not been able to recover any great portion of the traffic.

Another big item of business to the southern and southwestern railroads has always been the hauling of cotton, which moved in volume at very profitable rates. A few years ago the Commission fixed a scale of maximum reasonable rates for this traffic. The trucks came and diverted so much of the cotton that the railroads were obliged to cut in two these rates which we had fixed.

There are many other similar illustrations. For instance, the movement of household goods is now practically monopolized by the trucks. Some of the great livestock markets of the country are supplied chiefly by trucks, which also haul a great volume of fresh meats and packinghouse products. Trucks, tank-vessels, and pipe lines are the big factors in the transportation of petroleum and its products. To meet the competition of the trucks in the carriage of less-than-carload freight, the railroads have had to give store-door service, and they earn as little on this traffic as they do on their passenger business.

The case of coal is a little different. The trucks have taken much coal traffic from the railroads where the hauls are short, but much more damaging has been an indirect form of competition, consisting of the substitution for coal

of natural gas, fuel oil, and electric power. Coal, let me remind you, has always been the great traffic standby of the railroads. In the year 1936, they hauled, in round figures, 354,000,000 tons of coal, and it constituted nearly 37 per cent of the total tons of freight which they originated. In the year 1913, they hauled 360,000,000 tons of coal, and it constituted about 34 per cent of the total tons originated. These figures show that in 1936 the railroads hauled less coal and also less total traffic than they did in 1913. Yet in the 23 intervening years the country grew greatly in population and in capacity to consume and produce, and so did the railroads, in capacity to haul.

No doubt these facts are familiar to you, but they seem [fol. 392] to be overlooked by many. The country has been keen for the new means of transportation, and to obtain them has spent billions of dollars. These tremendous expenditures have produced the most magnificent system of highways that the world has ever known, the Panama Canal, the New York Barge Canal, and all manner of waterway improvements on the Mississippi River and its tributaries, to say nothing of pipe lines for both crude and refined oil and natural gas, and a great system of airways. They have brought widespread, intense, and serious competition to the railroads. Competition is a form of warfare, and in warfare some one gets hurt. Weakened by the present and the immediately preceding depression in business, the railroads are staggering under this competitive barrage and in grave financial distress."

So, also it is interesting and important to get the views, supported by facts and figures, of Dr. Walter M. W. Splawn, Chairman of the Interstate Commerce Commission, as expressed before the semi-annual meeting of the Associated Traffic Clubs of America recently:

"From the Civil War to the World War—that is, for a half century—we thought of transportation largely in terms of railroads. It was the railroads that were built ahead of the traffic to open up new areas. It was to the railroads that the traffic left the canals and the rivers. Aspiring commercial centers fought for more and better railroads. Every hamlet desired to be on at least one railroad. One of the most astounding changes of the past quarter century has been in the relative position of the railroads to other agencies of transportation.

Government Aid

Recently I laid out a mosaic of our transportation agencies in order to see something of the relative importance of each from the point of view of the social energy which is being currently expended upon each agency. I found that the government has aided every one of these in its infancy.

One hundred years ago, governments, particularly state and municipal, were aiding in the construction of canals and were having their attention drawn to subsidizing railroads. Under the leadership of a western senator, Stephen A. Douglas, of Illinois, the federal government began to grant portions of public domain to states with the understanding that the states would in turn use them as grants in aid of [fol. 393] railroad construction. In all, some 184,000,000 acres of land were given to promote railroad construction. From grants of right of way and other such concessions and from the total land grants, the railroads did realize nearly \$450,000,000 in cash and about \$87,000,000 in land for their own use. These \$537,000,000 of aid were of tremendous assistance in the rapid expansion of the railways.

The aid to waterways at first was largely by the states except for the improvement of our harbors. Up to 1882 the federal government had appropriated \$111,299,465 for all purposes in connection with our waterways—that is for harbor improvements, for harbors, for facilities on the Great Lakes and for dredging our rivers. By the outbreak of the World War that amount had grown to about \$840,000,000. By 1925, the total federal appropriation for these purposes had accumulated to \$1,311,597,443. By 1935, it had again doubled, and up to date the federal government has appropriated a total of about \$3,000,000,000 for the waterways. Of the expenditures, about \$700,000,000 has been for seacoast harbor improvements, \$236,803,193 on the Great Lakes, and about \$800,000,000 on the Mississippi River and its tributaries, and some \$184,127,543 on other waterways. These expenditures have been under the careful direction of most competent engineers and the outlays can not be said to be extravagant, so far as what the public has received is concerned.

There is always difference of opinion as to whether or not particular streams should be canalized and improved. The by-products of flood control have in large measure offset

any misdirected effort in opening up new avenues for transport by water. As a result of the huge expenditures since the World War on our waterways, much traffic has gone back to the water. For example, on the New York State canals, the peak of the tonnage was reached in the five year period 1866-1870, when it was over 5,900,000 tons per annum. That gradually fell as railroad service improved until by the outbreak of the World War it was less than 1,500,000 tons per year. Now the total tonnage on these state canals has increased back to more than 5,000,000 tons per annum.

Demand for Good Roads

With the phenomenal growth of the oil industry and incident thereto of the automotive industry, there has come a tremendous demand for hard-surfaced roads. Since 1921 the American people have expended upon the state highway systems or the designated highways approximately \$10,875,000,000. Of this amount, regular federal aid accounts for \$1,267,000,000. In addition there were special emergency relief funds amounting to \$566,000,000. According to the difference in the price level, the federal aid to railroads represented a greater amount than has the federal aid to highways—not absolutely but relatively. The pipe [fol. 394] lines have received no subsidies.

The most recent form of transport is being carried on with direct and indirect subsidies of the government. Up to the present \$17,000,000 have been invested by the federal government in landing fields, beacon lights, machines, and accessories for flight. This takes no account of any subsidy that may be contained in the payment for air-mail service and in current assistance to aviation operations, such as the federal operation of beacons.

Summing up, the federal government has given the railroads land grants of about \$537,000,000, to waterways and various improvements about \$3,000,000,000, and to highways less than \$2,000,000,000, and to the airways \$17,000,000. The total of federal aid extended to transportation is thus about five and one-half billion dollars. The complete story of the governmental aid, federal and state, to transportation cannot be detailed here. One would have to consider the capital investment, annual aid and maintenance, as well as special taxes levied on each agency.

Public Outlay

A better understanding of the relative emphasis upon different agencies of transport is had when we consider the current annual outlay by the American people for each means of transportation. Not counting interest on the investment, the total outlay for taxes, operating expenses, and depreciation for the year 1936 was \$20,000,000,000. The percentage of this total represented by highway transportation in 1936 was 75 per cent, for railways 19 per cent, for waterways 4 per cent, for pipe line $\frac{6}{10}$ of one per cent, and for airways $\frac{2}{10}$ of one per cent. Highway transport now consumes three-fourths of the annual outlay in taxes, upkeep, and operating expenses of our transportation facilities. Fifty-one per cent, or \$10,700,000,000 a year, of the total outlay is represented by the private passenger automobile, and 17 per cent, or \$3,600,000,000, is represented by privately owned and operated trucks. Only \$667,000,000 in 1936 was expended by the contract and common carrier trucks—that is, something over 3 per cent of the total. The privately owned and operated truck represented an outlay over five times that of the regulated truck. The expenditure upon the operations of boats on our coastwise and inland waterways was something over \$900,000,000, or just a little more than 4 per cent of the total. The expense of operating the pipe lines was under \$200,000,000, or about $\frac{6}{10}$ of one per cent of the total, while the airways, so far as the proportional expense is concerned, are a mere speck in the sky— $\frac{2}{10}$ of one per cent. It is true that, of the highway transport, much of it is for local pick-up and delivery, for pleasure, and for the accommodation of the individual.

[fol. 395] When we come to consider the revenues received by common carriers of all kinds in 1936, we find the total approximately \$7,000,000,000. Of the \$7,000,000,000 of revenue received by all forms of common carrier transport, the share of the steam and electric railroads was nearly \$5,000,000,000, or nearly 70 per cent, the highway common carriers received 16 per cent, the waterways $10\frac{1}{2}$ per cent, the pipe lines 3 per cent, and the airways $\frac{1}{2}$ of one per cent of the total.

With the growth of competition, there has also come a great improvement in the quality of the service. The railroads have increased the average freight train mileage per

hour from 12 to more than 16 miles. They now have over 400 trains which make an average of 60 miles per hour, whereas four or five years ago there were only 30 such trains. Air-conditioning is becoming universal, even in coaches. The busses on the highways are rapidly becoming super-luxurious. Transport in the air is not only comfortable but its speed surpasses the miraculous stories of the Arabian Nights. Some of our barges and boats are carrying traffic profitably at one-fifth of what the railroads were charging a few years ago. The reduction in cost by specialized water transport, such as oil tankers, is almost unbelievable.

More Facilities Than Needed

Under the spur of competition and the whip of government subsidy, we have developed more and better transportation than the traffic now requires. The result is a deadly contest between different companies for the existing business. The privately owned truck not subject to regulation sets the rates for the common carrier truck. Shippers in their struggle for markets play one common carrier truck against another, using the privately owned truck and sometimes the out-of-pocket costs of such activity as the yardstick. Railroads undertake to meet the lowering rates by water, by pipe line, and by highway. Then the various agencies enter into all sorts of competition with each other, both in expense of the service rendered and in the rates charged for the service. The consequence is that this competition has become undue.

Very few companies carrying on transportation by any means whatsoever now make money. Many small trucking organizations carrying specialized traffic for large shippers are making money—more, perhaps, than they would concede. A few railroads strategically located with reference to volume of traffic, such as the Pocahontas lines, continue to be fairly prosperous. The oil pipe lines are folded into an integrated industry. Anything the companies lose on their rates on oil is made up in other ways, and vice versa. [fol. 396] We not only have more transportation facilities and equipment than the present traffic now supports profitably, but we have all sorts of organizations engaged in transportation. The common carrier companies, such as the railroads and the regulated trucks on the highways, are available to all sorts of shippers and to the public generally.

But individual companies and private corporations engaged in any sort of activity do their own transporting and their transportation is now mounting into billions. It is these non-common carrier activities which have demoralized the rate structure for the common carriers. There is a problem which the traffic men of this country are best equipped to attack. Just how far should an individual corporation, not a common carrier, go in transporting its own goods?

Falling Off in Business

In spite of the consequences of this unduly competitive situation, the railroads a year ago were doing rather well. In fact, their managements considered the financial position of the rail carriers to be such as to justify a substantial increase in wages. The ink was hardly dry on these wage contracts before there set in a severe business recession. The effect of this recession upon the business of the rail carriers is disclosed by a glance at the carloadings. The total carloadings for the first fourteen weeks of 1938, ending with April 9th, were 7,680,205 carloads. For the corresponding fourteen weeks of 1937 they were 9,896,380, a falling off of more than two million carloads the first fourteen weeks of this year. The effect of this tremendous shrinkage in traffic accompanied by an intensification of competition accounts for the temporary toboggan of railway earnings. In the competition for the shrinking traffic, rail carriers were particularly handicapped because they were trying substantially to increase their rates while their competitors were free to reduce rates and while many men out of employment were willing, for the time at least, to drive privately owned trucks long hours for very little compensation.

Financial Effects

Let us observe some of the financial effects upon the railroad companies of this undue competition and of the business depression. In 1937, the total income of all railroads was \$4,345,000,000. Operating expenditures, other than for labor, cost \$1,384,000,000. Taxes which railroads paid were \$326,000,000. That left \$2,600,000,000 for the investors and employees. The employees received \$1,866,000,000. There were accrued as fixed charges and rentals \$643,000,000, but some of this is in default. That left \$99,000,000 for [fol. 397] the stockholders. Actually \$167,000,000 was paid

out in dividends. This is because 69 Class I railroads earned \$231,000,000 after paying fixed charges. The other 61 Class I railroads ran a deficit of \$132,000,000. This left a net of only \$99,000,000 available for stockholders. That is to say, in 1937 there was available for the stockholders of the railroads as a whole less than \$100,000,000 whereas the taxpayers and the public in general took from the railroads \$326,000,000, and the bondholders on a bonded indebtedness of \$13,000,000,000 including equipment obligations and debts of one railroad to another received on an average about $4\frac{1}{2}$ per cent. In January and February of 1938, the railroads of this country as a whole, after paying taxes, had left for fixed charges only \$4,800,000. For the same two months of 1937 that figure was \$77,000,000.

Rates and Revenues

On this showing, the railroads would have had to increase their revenue on existing freight traffic about $17\frac{1}{2}$ per cent to put them back in the position they were in the first two months of 1937, assuming no increase on passenger and miscellaneous traffic. No one has suggested that such an increase would be practicable. In order to meet competition, the railroads have voluntarily reduced their rates below what they could charge under the orders of the Interstate Commerce Commission and the state commissions to where the going rates in February of this year on the traffic actually moving averaged 10 per cent less than what the railroads would have averaged if the maximum reasonable rate prescribed by the regulatory authorities had been charged. That is to say, the rates which they were applying and charging averaged 10 per cent less than what they could have charged under existing orders of the commissions.

The level of the maximum reasonable rates was lifted on an average of about 5 per cent in Ex Parte 123. That gave the railroads a margin between the average of what they were charging and the average of what they could charge of 15 per cent. Actually, they hope to lift the rates they are charging on an average of 5 per cent. That will still leave the average 10 per cent below what they could charge.

In lifting the railroad rate level 5 per cent, the railroads are facing a considerable diversion of traffic. Whether they will gain as much by the increase of an average of 5 per cent on what stays on the rails as they will lose from traffic

diverted to other agencies as a result of these increases, remains to be seen.

Wages

[fol. 398] Some contend that an immediate cut in railroad wages will solve their problems. Last year an increase was given the railroad employees by the managements of the railroad companies before the managements knew whether or not they would get any increase in freight rate levels in Ex Parte 115. As a result of the increases in wages, they added, on the basis of the traffic of 1937, \$19,500,000 to the payroll for January and February of 1938. The increases in the maximum level of freight rates which the Commission authorized in Ex parte 123, as has just been said, was about 5 per cent and on the basis of the traffic of the first two months of 1938 would amount to nearly \$21,000,000. Applied to the depressed traffic of January and February, the increase of 5 per cent was a little more than sufficient to meet the increase in wages. If the wage increase received in 1937 had not been effective in January and February, 1938, the railroads would have had for those two months \$24,000,000 after taxes were paid and before fixed charges, instead of \$4,800,000. Even this would have been less than one-third of the \$77,000,000 they had a year ago.

Slump in Carloadings

These figures emphasize the financial effect of the slump in carloadings. The problem of rail prosperity is primarily the problem of increasing the volume of their business. It is true that some of the competitors of the railroads, such as the trucks, have not yet standardized their wages and many truck drivers are working excessively long hours for miserably low wages. In time, that will be adjusted. This is typical of many long-run adjustments which may be worked out advantageously to each of the agencies of transport. The slowing down of business during the winter of 1937-1938 has been radical but doubtless temporary. But the permanent diversion of more and more traffic from the rails to other agencies through cut-throat competition and through the unregulated activities of non-common carrier agencies is the nub of the problem. During the time which must elapse before that problem can be solved satisfactorily, the railway property must be kept intact.

In the meantime, every group has given up something. The bondholders of 37 companies and the properties of their companies in trusteeship or in receivership and the interest not being paid on many issues of bonds. These properties, operated under the protection of the courts, are being rehabilitated. The shippers have been subjected to substantial increases in the rates which they may be called upon to pay. While the employees did receive an increase in the wage levels in 1937, they have been subjected to most drastic reductions in the numbers employed. There are today 108,000 fewer employees on maintenance of way and equipment than a year ago. Whereas, some years ago there were 2,000,000 railroad employees, there are now less than [fol. 399] 1,000,000. While much of railway employment has been reduced through mechanization of different processes, thousands of clerks, yard men and train men and other employees are now laid off because of the shrinking business.

This present situation is a result of all that we have reviewed. A readjustment in the light of the facts, giving each agency a clear field where it has the natural advantage, and the elimination of cut-throat competition and of the unnecessary wastes thereof will take time. In the meantime, the railway plant must be kept intact. Maintenance must not be unduly deferred. Modern equipment should be substituted for that which is obsolete and the properties be kept in good condition.

President Roosevelt has vigorously assembled the articulate opinion in this country concerning the financial difficulties of the railroads and how to meet them. He has consulted the Interstate Commerce Commission, representatives of agriculture, of industry, of banking, of railway labor and of railway management. He has presented to the Congress a report by the Interstate Commerce Commission on the condition of the railroads and various recommendations for meeting their difficulties. He has asked the people to think the problem through. After mature deliberation the country will settle upon a satisfactory transportation policy.

Basic Soundness

This review discloses the basic soundness of the railroad industry. That it should be doing as well as it is in the face of undue and cut-throat competition and in the midst of a business recession which has dried up so much traffic

is persuasive of the fundamental soundness of the railway business. The railroads are necessary. They are giving improved service. They are rapidly adapting to changed condition. With fair treatment and with the revival of business which is to be expected, they will pay their way. In the good years they should earn enough to tide them over during the lean years. If the railroad companies are protected from exploitation, there is no reason why their credit should not become stable. The American shippers require the reliable and flexible service of the railroads, knowing that the railroads alone can be depended upon for the satisfactory movement of heavy goods and for transportation for great distances."

[fol. 400]

III

(a) I attach, marked Exhibits Nos. 25, 26 and 27 annual reports of the N. C. & St. L. for the years 1935, 1936 and 1937, giving accurately all relevant operating and financial details.

(b) The N. C. & St. L.'s. power and equipment, with the exception of 500 box cars purchased in 1937, unfortunately, are not new. The details as to these and the average age of each class, together with a statement of equipment retired from transportation service since January 1, 1936, to June 30, 1938, and equipment presently scheduled for retirement are set out in full in Exhibit No. 28. It will be seen that the average age of our locomotives is 26 years, passenger train cars 22 years, and freight cars 21 years. Only 15 per cent of the total number of locomotives are under 20 years old. (See also exhibit No. 47 hereto.)

(c) The age of its more important buildings, depots, and other structures is set out in detail in Exhibit No. 29. The average age of our principal shop buildings at Nashville is 39.3 years, and the average age of shop buildings at all principal points is 29.4 years. The average age of freight depots at the larger cities on our line is 35.4 years, while the average age of freight depots at more important intermediate points is 46.5 years.

(d) Agencies which, because of lack of business, due largely to the inroads of motor vehicles, are closed, probably [fol. 401] permanently, are set out in detail in Exhibit No. 30. I also attach, marked Exhibit No. 31, a map showing the location of these closed agencies. Since January 1,

1928, 111 agencies have been abandoned, and since Sept. 1, 1920, 145 have been abandoned, leaving only 86 open agencies today. Some of these structures, built at great cost, through which freight and passengers were once handled in volume, are no longer used for railroad purposes. Others are used only by an occasional passenger or for small shipments of less-than-carload freight. Most of these station buildings and structures are still carried in the Investment account of the railway under rules of the Interstate Commerce Commission, which forbid writing them out until actually physically abandoned and destroyed. Photographs of typical buildings above-described are attached, marked Exhibit No. 32.

In addition to buildings and structures used only occasionally for railroad purposes, this railway owns many which it does not use at all—yet all of them are carried, under rules of the Interstate Commerce Commission, in Investment account. A summary of these buildings is attached, marked Exhibit No. 33. The list includes 263 section houses, 74 tool houses, 28 stock pens, and 7 depots. Many of these buildings and structures have not been used for years, and, as far as we can see, will not be used in the future. They produce no revenue. Pictures of typical structures, their location, etc., are accurately set out in [fol. 402] Exhibit No. 34, attached. All of these cost a lot of money, but most of them are now worth only their scrap value, which is practically nil.

(c) The financial results of operations of the N. C. & St. L. from January 1, 1931, through June 30, 1938, are completely and accurately set out in detail in Exhibit No. 35. We began with January 1, 1931, for two reasons. This furnishes a reasonable period of time on which to base a plateau of earnings, and also the last dividend paid by the N. C. & St. L. was in 1931. That single dividend in that year was not earned but paid out of surplus. Since that time the stockholders have received nothing at all on their interest in the property of the N. C. & St. L., although during the same period the total tax bill has been the equivalent of \$15.72 per share of outstanding stock. I attach, marked Exhibit No. 36, a statement showing profit and loss balance of the N. C. & St. L. Railway, which shows a steady decline from \$10,657,769.90 on December 31, 1931, to \$7,803,927.31 on June 30, 1938.

(f) The securities of the N. C. & St. L. are not largely traded in. The stock is ordinarily sold in lots of less than 100 shares. The official records of public sale of its securities for the same period mentioned above are fully set out in Exhibit No. 37.

(g) Even in its best years, the earnings of the N. C. & St. L. available for improvements, fixed charges (including rent on leased lines), and dividends represented a modest [fol. 403] return on its valuation as fixed by the Interstate Commerce Commission in I. C. C. Docket No. 367, Feb. 21, 1930, 31-Valuation Reports 567. This is accurately shown in Exhibit No. 38. It will be noted that while the I. C. C. fixed 5¾% as a fair return, the N. C. & St. L. Railway during the past seven years averaged slightly less than one per cent. For the same seven year period, the average return for all Class I roads in the United States was 1.94%.

(h) The N. C. & St. L., like many railroads, has been forced by law to contribute directly, as distinguished from general taxation, to the construction of grade crossing protection, grade eliminations, sidewalks, and the like, which add nothing to its earning power. See Exhibit No. 39. The buses and trucks, taking advantage of these facilities, which unquestionably are in the public interest, do not directly contribute to such improvements, and have never been asked to.

(i) The prices of materials and supplies used by the N. C. & St. L. have gone up very rapidly in the last two or three years, as shown in Exhibit No. 40, attached. For example, the percentage increase in the cost of a few major items in 1938, as compared with 1933, are cross ties 53%, pig iron 96%, bar steel 53%, car decking 93%, coal 21%, truck bolsters 80%, etc. This means that the N. C. & St. L. must spend more to get the same things than it did a few years ago.

(j) Attached hereto, marked Exhibit No. 41, is a statement of tax accruals on the N. C. & St. L. from 1916 through [fol. 404] 1937, together with the annual net corporate income or deficit. During this 22 year period the N. C. & St. L. had net corporate income in the amount of \$23,772,000.00 and paid taxes in the amount of \$15,526,000.00. In other words, for each dollar of net corporate income for a period of 22 years, 65 cents was paid out in taxes. For the ten year

period ended Dec. 31, 1937, tax payments actually exceeded corporate income by \$2,218,060.00. For this period governmental agencies took from the N. C. & St. L. \$7,027,854.00, leaving the owners only \$4,809,794.00. For the seven year period ended Dec. 31, 1938 governmental agencies took \$4,023,609.00 in taxes, while the owners suffered a deficit of \$2,708,959.00.

(k) Attached hereto, marked Exhibit No. 42, is an accurate compendium of N. C. & St. L. tax accruals, interest on bonds and equipment trust notes and rent for leased lines.

For the year 1933 the total taxes paid by the N. C. & St. L. were equivalent to 57% of the total interest paid on bonds and equipment trust notes and 50% of the total rental for leased lines.

In 1937 interest and rent were slightly less than in 1933 while taxes had more than doubled and were equivalent to 135% of the total interest on bonds and equipment trust notes and 116% of the rental for leased lines.

(l) Attached hereto, marked Exhibit No. 43, is a detailed statement of revenues, expenses and other income and charges of the N. C. & St. L. for the first six months of 1938, as compared with the corresponding period of 1937.

[fol. 405] (m) Attached hereto, marked Exhibit No. 44, is a statement of idle power and rolling stock on the N. C. & St. L., as of May 31, 1938, together with a statement of reduction in train service during the last 13 years. The 17 locomotives, 26 passenger cars and 2,438 freight cars shown on this exhibit as idle on May 31, 1938 had not been in service at any time since January 1, 1938. Attached hereto, also, marked Exhibit No. 45, are for the years 1929-1937, inclusive, and first six months of 1938, the average number of passenger trains, average number of freight trains, and average number of loaded revenue cars and empties per day. These loads and empties are based on the divisional and not the system count. This means that, if a given car moves from Nashville to Atlanta, which involves two operating divisions, it will show up on this exhibit as two cars instead of one.

(n) Each year our Chief Engineer and Superintendent of Machinery submit budgets showing work which should be done to properly maintain the property and to make im-

improvements thereto. Details of forced economies in recent years over planned budgets, because of lack of income and reserves, are accurately detailed in Exhibit No. 46, attached.

(o) The latest available figures as to the number, age, and condition of locomotives and cars of all sorts, including those which are not now serviceable on account of age, physical condition and the enforced cutting down on our maintenance program, are accurately detailed in Exhibit No. 47. All rolling stock, including 17 unserviceable locomotives, [fol. 406] 1,052 unserviceable cars, together with 59 other cars scrapped since the date of the return, are reported in the tax return filed with the Tennessee Commission for 1938-1939 at values based on original cost less accrued depreciation, without deduction on account of unserviceable condition in accordance with rules of the Interstate Commerce Commission.

(p) In the first six months of 1937 the N. C. & St. L. had a clear profit of \$48,019.00, called Net Corporate Income. Business fell off drastically in the latter part of the year, resulting in a deficit in that account for the entire calendar year of 1937 of \$471,623.00. For the first six months of 1938 there was a deficit in Net Corporate Income of \$61,783.00. If we had carried out our reasonable and modest budget fixed approximately the first of the year the loss would have been in excess of \$700,000.00 for this six months period. Some interesting details comparing the number of ties used, tons of rail laid, etc., for the first six months of 1938, as compared with the first six months of 1937, are as follows:

[fol. 407]	1937	1938
Ties renewed	95,383	80,892
Tons of rail <u>laid</u>	6,175	3,503
Cubic yards ballast used	66,832	42,475
Freight cars repaired (owned by N. C. & St. L. and not including running repairs)	642	118
Locomotives overhauled (classified repairs)	55	48
Passenger cars overhauled	30	4
Tons of coal consumed in locomotives	218,508	201,867

(q) The bulk of the N. C. & St. L.'s branch line mileage is in Tennessee and constitutes approximately 40% of its total mileage in Tennessee, and presents a major problem. It is evident from a map of the N. C. & St. L., filed by other witnesses, that most of its branches in Tennessee lead off more or less at right angles from its mainline, with the obvious result, to give typical examples, that Sparta is much

closer to Nashville by highway than by railroad, and Sequatchie is much closer to Chattanooga by highway than by railroad. These branch lines were built largely to furnish a means of transportation to coal mines and timber lands. Some of the best of these mines have been worked out, and closed forever. The timber anywhere near the railroad has been largely exhausted for years past. Details of this depletion are set out in Exhibit No. 48.

(r) The N. C. & St. L., along with other railroads, has obtained some additions in the rates and charges for some commodities hauled, and on passenger service, but this still leaves the average revenue per ton-mile and the average revenue per passenger-mile .003% and 32.89%, respectively, under what they were in 1920; 3.21% and 42.12% under what they were in 1923, and 4.45% and 41.41% under [fol. 408] what they were in 1925.

(s) A railroad is never complete. New inventions make more or less obsolete existing appliances and facilities, regardless of physical condition. To conform to a modernization program, which will add little or nothing to the N. C. & St. L.'s revenues, but designed primarily to aid in safety of operation and service to the public, the N. C. & St. L. has before it for the next few years the necessity of spending large sums for improving air brakes and other details, accurately shown in Exhibit No. 49, attached hereto. In addition it is confronted, because of the pending construction of the Gilbertsville Dam, with the problem of relocating some ten or eleven miles of its line at Johnsonville, Tennessee, all of which T. V. A. engineers say (I hope correctly) will be paid for in its entirety by T. V. A. or the federal government, except the bridge across the Tennessee River at that point. If the N. C. & St. L. is forced to pay for the reconstruction of this bridge over this tremendously deep pool, which at Johnsonville will be more than sufficient to float the Queen Mary, or any battleship in the United States Navy, it will have to spend approximately \$900,000.00 which will add nothing whatever to its earning power, and it will have to borrow the money for that purpose. The N. C. & St. L. is taking the position—what the effect will be, I do not know—that the government is both legally and morally obligated to build this bridge, but to date there has been no indication that our views will be acquiesced in by the authorities of [fol. 409] T. V. A.

(t) The N. C. & St. L., naturally and properly, pays the total maintenance cost of its roadway, bridges, and structure. For the five calendar years ending Dec. 31, 1937, this averaged \$1,505.00 per mile per year. On the other hand, this expense is paid entirely by the public for those who use boats and those who use the airways and motor vehicles. For the period just mentioned, the average cost of maintaining each mile of public highway in Tennessee was \$1,467.00, or a grand total for the period of \$10,640,534.00. These figures were obtained from the Highway Department of the State of Tennessee and include federal funds where used for maintenance. At the same time, the government of the United States spent in maintaining each mile of canalized rivers, the Ohio, Tennessee, and Cumberland, for the same period \$6,631.00 per mile, or a grand total of \$14,223,532.00. The boats, not having to pay for the use of locks and dams on the canalized rivers, have contributed nothing to the maintenance thereof, naturally can transport with operating profit commodities such as gasoline, gravel, and the like, at a cheaper rate to the shipper than can the railroads. But when all costs are considered, river transportation is much more costly than by railroad.

IV

(a) The budgets for the N. C. & St. L. for the calendar year 1938 were prepared as usual prior to the first day of the year. These budgets have had to be drastically curtailed, as elsewhere shown, because of lack of revenue and reserves. Even with the present drastic curtailment in maintenance, which cannot be continued indefinitely, the N. C. & St. L. will be fortunate if, for the present calendar year of 1938, it breaks even, that is, takes in from all sources enough to pay essential expenses and taxes, including nothing for improvements or dividends. If business should pick up in 1939, deferred maintenance, resulting from past and present drastic curtailment, would have to be added in that year to normal maintenance. As best as can be estimated from the first six months of 1938, this deferred maintenance will be approximately \$1,025,000.00. Details as to bad order cars are accurately set out in Exhibit No. 47. Since January 1, 1934, the N. C. & St. L. has scrapped or sold 2,239 cars of all kinds and 25 locomotives, which cost \$2,139,850.37, the salvage value being \$285,533.07.

(b) The N. C. & St. L. has many bridges which should be rebuilt. While they are perfectly safe for the present volume of traffic, with the present "slow orders" thereon, the existence of these slow orders necessarily increases our cost of operation. The number of bridges on which there are now "slow orders" and the age of each are accurately set out in detail in Exhibit No. 50.

I mention these details for the reason that, regardless of what improvement in traffic may eventuate this fall and next year, it seems hopeless to expect that the N. C. & St. L. will be able to earn or pay any dividend, even in the calendar [fol. 411] year 1939. I, personally, look for poor business at least the rest of this calendar year.

(c) The N. C. & St. L. since 1916 has made a net investment in its property, for items which the Interstate Commerce Commission requires to be carried in capital account, the sum of \$20,125,488.40, and yet with this vast expenditure (more than its bonded debt) added to its previous investment, the N. C. & St. L.'s profit available for improvements and dividends was \$3,056,935.32 in the calendar year 1916, and a deficit of \$471,623.02 in the calendar year 1937. This tragic failure to earn, even with these expenditures, as much as was earned in 1916 was not due in any degree to lack of efficiency in operation. On the contrary, since 1920, which is as far back as records are obtainable, the average speed of freight trains between terminals has increased 60%; the average number of cars per freight train increased 32.5%; and the average amount of coal consumed per 1000 gross ton miles decreased 24.3%. Yet, to meet the demands of the public, improved facilities and services are necessary, on which, based on existing conditions, the earning of a reasonable return in the near future is doubtful, such as further air-conditioning, better passenger train cars, faster trains and pickup and delivery service (in 1937 pickup and delivery service cost the N. C. & St. L. \$160,385.11). Until other forms of public transportation are regulated, taxed and treated as are the railroads by public authority there is nothing but chaos ahead in the transportation field, and [fol. 412] even a substantial improvement in general business cannot offset the disadvantages under which the railroads now operate under the laws of the land.

(d) The fair cash value of property on a free and open market is based upon the use to the purchaser or the income,

present and potential, expected to be derived. The security holders of the N. C. & St. L., of course, can use its properties only as other patrons. Public demand for securities, as evidenced by the sale of stocks, bonds, and equipment trust notes, is based chiefly upon the belief in the security of the investment and the hope of a return thereon. The very small percentage of outstanding securities purchased by the public during the seven year period since 1931 indicates that purchases have been induced largely by the hope of a speculative re-sale profit. No investor has been willing to invest any appreciable sum even at the market prices quoted in Exhibit No. 37 hereto. In 1937 stock certificates issued by the Railway, representing transfers, totaled 1,225, for 17,583 shares, an average of 14 shares for each certificate issued. Because the Louisville & Nashville Railroad Company owns approximately 73% of the stock of the N. C. & St. L., and because that road is much stronger financially than the N. C. & St. L., the securities of the N. C. & St. L., particularly bonds, have not depreciated on the markets as much as, in my personal opinion, they would have if it were an independently owned line; the natural belief in the minds of investors being that the L. & N. would, in case of necessity [fol. 413] prevent default on fixed obligations. For this reason, in my opinion, the holders of the stock and bonds of the N. C. & St. L. have held on longer than they otherwise would, and, therefore, the few market sales do not give as clear an indication of the fair cash value as might otherwise be the case.

The fair cash value of such a property as the N. C. & St. L. is best measured by its actual and potential earnings, and on this basis the value of its properties for taxation for the seven year period 1931-1937, inclusive, has consistently remained at a much lower level than at any time in over twenty years; because, as I stated above, for the reasons given, there is no reasonable probability that the N. C. & St. L. can properly maintain its properties, giving no consideration to improvements, and have any profit for the next eighteen months.

Aside from any question of equalization, the fair cash value of the N. C. & St. L. as of January 10, 1938, was far below such value in the years 1914, 1915 and 1916, when this Commission found the taxable value of N. C. & St. L. properties in Tennessee to be \$15,483,095.50, and \$15,209,880.00, and \$15,219,520.00, respectively. The value of N. C. & St. L.

stock and bonds in 1914, 1915, and 1916, based on actual sales, is set out in Exhibit No. 51. This compared with the situation today, tells better than words and argument the drastic loss in "fair cash value" of this once reasonably prosperous railroad.

[fol. 414]

V

The Railway asks that the so-called West Nashville Branch, with 3.63 miles of so-called main track, be eliminated from the main track mileage and be considered as side track mileage in the assessment for ad valorem taxation.

This track has been reported for taxation by the Railway as main track mileage since its acquisition in 1887, but for many years it has been nothing more than a terminal yard track, used only in switching movements. It was purchased from the West Nashville Land Company on June 1, 1887, which company had during the same year caused it to be constructed in aid of the development of an industrial area in a section then somewhat inaccessible to the business district of the City of Nashville. This Railway agreed to provide the track so acquired with freight and passenger service, and for some years trains were operated thereon. However, the City of Nashville has grown westwardly and the greater part of said track is now within the corporate limits, the remainder being immediately contiguous thereto. The area is served by paved streets and street cars. No passenger trains have been operated over the trackage for more than fifteen years, and freight service is confined to switching movements. The West Nashville agency station was closed February 29, 1932. Since that date a clerk has been stationed at the former agency for the convenience of [fol. 415] shippers in that area, but all freight is accepted and delivered there on the same terms as if accepted or delivered at the Nashville agency station, the tariff rates applicable to Nashville being applied. The mileage of the so-called branch in no way affects the tariff applicable to freight consigned to or from Nashville and therefore no road-haul revenue is produced by the branch. Switching charges to and from industries served by the track are absorbed in the rates to and from Nashville on cars moving to and from other points on the line.

A blueprint map showing the course of this trackage is filed herewith as Exhibit No. 52. The track leaves the main

track at the point marked 36 and is traced in yellow to the property line of the State of Tennessee's penitentiary tract. The various numbers on the map indicate industries served by the track. The map is a section of a larger map designed to show the location of the industrial tracks served jointly by this Railway and the L. & N. in the City of Nashville.

Annual reports made by the Railway to the Interstate Commerce Commission are on forms issued by the Commission, containing the instructions of the Commission as to the proper method of reporting the various items. Page 400 of this form states the Commission's rule for classifying tracks as branch lines or yard tracks as follows:

"Branch lines are distinguished from industrial tracks or [fols. 416-417] yard tracks and sidings in that branch lines serve one or more stations beyond the point of junction with the main line or another branch line and to or from which stations train service, or its equivalent is performed."

The West Nashville Branch serves no station to or from which train service or its equivalent is performed. The track is jointly maintained and operated by this Railway and the L. & N. Railroad Company as a part of the Nashville terminal yards and it is essentially a yard track. There is no justification for continuing to classify it as a branch line main track, so it is submitted that it should be eliminated from the main track mileage assessed for taxation in Tennessee.

I make this affidavit as evidence to support the protest filed by The Nashville, Chattanooga & St. Louis Railway with the Tennessee Railroad and Public Utilities Commission on August 31, 1938. I am agreeable to cross examination by the Commission, any member thereof or by its counsel.

Fitzgerald Hall, President, The Nashville, Chattanooga & St. Louis Railway.

Sworn to and subscribed before me, this 30 day of August, 1938. Wm. C. Crutchfield, Notary Public.
My commission expires Jan. 5, 1941. (Seal.)

[fol. 418] PAGES FROM EXHIBITS NOS. 5, 6 AND 7 TO BILL OF
EXCEPTIONS

EXHIBITS TO THE AFFIDAVIT OF FITZGERALD HALL

[fol. 419] EXHIBIT No. 14

A statement showing the reasonably to be anticipated results of the T. V. A. on the movement of coal, fertilizer and other traffic of the N., C. & St. Louis Railway.

The declared objectives of the Tennessee Valley Authority are well publicized. As announced, these cover power, flood control and navigation, in the order named. Their relative importance from a cost standpoint is said to be:

Power	52 per cent
Flood Control	28 " "
Navigation	20 " "
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The earnings of the N., C. & St. L. and, therefore, its value for purposes of taxation, are affected by the first and last items. Nor is the question only one of sound economics as a whole. This will not be discussed here, nor is it necessary, for while it may be true that the scheme, brought into completion as planned, will have all the results claimed and hoped for by its proponents, yet, nevertheless, at the same time work great hardship and loss, more or less complete, upon individuals and companies. For example, to the extent power created by great dams at Norris, Chickamunga, Guntersville, Mussel Shoals, Pickwick and Gilbertsville supersedes power otherwise made through the use of coal mined at points on the N., C. & St. L., to that extent the business of those who mine, ship and transport this coal will lose their business.

It may be the country, the State or the particular section will benefit as a whole, but these benefits can bring small comfort to the classes described.

While the coal fields served by the N., C. & St. L. are neither so large nor so important as those in other parts

of the south, or in other parts of Tennessee, nevertheless the revenue earned by the N., C. & St. L. on coal and coke locally produced has considerable value. In 1936 this revenue was \$607,309, in 1937 \$558,111.

There is another feature of the problem not to be lost sight of. The N., C. & St. L. in 1937 paid for coal used by engines in train and yard service \$954,922.59, and this coal came from N., C. & St. L. mines. If through the loss of commercial tonnage due to the substitution of Tennessee Valley Authority hydro-electric power for power made from N., C. & St. L. coal, the mines on the N., C. & St. L. lose a substantial part of their tonnage, it is seriously doubted if they can continue in business. This is seen from the fact that, e.g.—in 1937 the coal produced at these mines and sold to the N., C. & St. L. was more than half of the total production,—427,295 tons of a total of 848,209. If the N., C. & St. L. must go to other coal fields for its engine fuel, it must pay transportation costs up to its rails, with the total cost greatly increased over the present figure.

[fol. 420] In this Tennessee Valley Authority threat to coal production it is plain the value of the N. C. & St. L. is threatened with a substantial loss.

In 1937 the Tennessee Valley Authority manufactured at its Mussol Shoals plant (the only plant now operating) 44,000 tons of complete fertilizer, and was able to supply not more than 75 per cent of the orders received, all of which came from County Agricultural Agents. To manufacture a ton of commercial fertilizer requires approximately 2,100 pounds of raw materials. The 40,000 tons made at Mussol Shoals represented, therefore, a total tonnage in and out of 82,000.

It is understood that the present production at Mussol Shoals commences only the fertilizer project planned by the Authority. The possible effect of its future competition upon the value of the N. C. & St. L. may be seen from the following figures which show the tons of fertilizer both originated and received from connections, with the revenue earned for the period 1928 to 1937 inclusive:

Year	Originating on line	Revenue	Received from con- nections	Revenue	Total	
					Tons	Revenue
1928	117,570	\$226,511	75,276	\$122,171	192,846	\$348,682
1929	128,494	246,312	87,988	125,018	216,482	371,330
1930	129,217	251,547	90,972	130,123	220,189	381,670
1931	90,569	187,026	55,386	89,796	145,955	276,822
1932	65,466	124,309	29,420	48,019	94,886	172,328
1933	82,710	159,430	62,774	115,158	145,484	274,588
1934	98,900	178,577	49,241	81,362	148,141	259,939
1935	104,332	181,227	58,775	87,607	163,107	268,834
1936	106,813	184,610	71,017	95,569	177,830	280,179
1937	109,196	177,817	82,864	116,681	192,060	294,498

The full potentialities of Tennessee Valley Authority competition with this and other railways serving the immediate district may be judged from the following figures estimated by an Authority Engineer in 1929-30, his report being prefaced with the statement that one-third of all the tonnage now moving by rail to, from and across the Tennessee Basin could use the River for all or part of the haul, at a saving of approximately \$1.31 per ton:

Commodity	Tonnage	Saving per ton	Total savings
Coal and coke	2,185,705	\$0.52	\$1,135,276
Sand, gravel and stone	1,384,960	.704	974,980
Forest products	2,478,179	1.08	2,686,761
Grain, flour and mill prods.	804,200	3.12	2,512,067
Sulphuric acid	350,000	.85	298,750
Iron and steel	274,625	3.13	858,749
Vegetable products	238,700	2.63	725,420
Brick, tile, artificial stone	137,840	.40	54,731
Miscellaneous	1,504,540	2.06	3,095,010
Total	9,358,749	\$1.31	12,231,744

[fol. 421] Of the above total estimated saving, the guess was that 60 per cent (\$7,300,000) would be available at once, while ultimately it would be approximately \$22,800,000.

For the year 1936 the report of the Chief of Engineers, U. S. Army, shows the following tons of the commodities named handled on the Tennessee River Knoxville to Paducah, Ky., inclusive:

	Tons
Cement	102,933
Coal	4,719
Forest products	171,010
Gravel	1,184,399
Sand	666,124
Slag and stone	5,945
Iron and steel	12,809
Machinery	11,137
Miscellaneous	7,321
Total	2,166,397

Of this total the report says 1,206,187 tons were Government materials, including all the cement, all the sand, and 726,197 tons of gravel.

The same report also breaks down into items the tonnage handled on the Cumberland River below and above Nashville, as follows:

	Tons		Total
	Below Nashville	Above Nashville	
Gasoline, kerosene, oil	243,780	25,767	269,547
Forest products	28,723	1,584	30,307
Sand and gravel	333,223	75,209	408,432
Stone	67,220	67,220
Fluorspar	22,365	22,365
Miscellaneous	11,887	755	12,642
Total	707,198	103,315	810,513

The petroleum products named, constituting more than 25 per cent, were handled for the four major oil companies operating in the United States, with little, if any, public benefit so far as a study of comparative retail prices shows. The sand and gravel, more than 50 per cent of the total, was for local firms, largely in Nashville, with an average river haul, when originating below Nashville, of 22.4 miles; above Nashville, 29.8 miles.

It is not practicable to determine the proportion of the above movements made possible solely by canalization. If, however, all of it, there is little return shown on the cost of the latter, with the chief beneficiaries the great oil companies who now barge.

Up to and including the latest available report, the Government has spent on the Cumberland River \$13,365,516, and in the latest reported twelve months \$338,119. The total amount expended on the Tennessee River is not available, but if only 20 per cent of T. V. A. expenditures are [fol. 422] charged against navigation, the totals are enormous. As to the Cumberland River, clearly public money would be saved if the traffic handled there was by rail at Government expense, with river improvement never begun.

A statement of the number, and something of the size and description, of boats regularly bringing gasoline, oil, etc.,

to points in competition with the N. C. & St. L. Ry., and something of the volume which they handle, and estimated loss in revenue by the N. C. & St. L. Railway account of these operations.

The movement of petroleum products by river, principally on the Cumberland but now also on the Tennessee, is a circumstance of importance in any consideration of the value of the N. C. & St. L. for purposes of taxation.

The movement of these products by river on the Cumberland began within the last few years. Government reports for 1936 show there were handled in that year on the Cumberland River below Nashville 243,780 tons, above Nashville 25,767., a total of 269,547 tons, which is the equivalent of 80,864,100 gallons.

Four important oil companies now barge petroleum products on the Cumberland, with unloading tank stations at Dover, Clarksville, Ashland City, Nashville and Carthage; Nashville is more important than the four others combined.

The N. C. & St. L. has for some time maintained a record of gasoline reaching Nashville by river. In 1936 this was 53,414,400 gallons; in 1937 67,371,000, an increase of 13,957,000 gallons, or approximately 38 per cent. In the first six months of 1938 there were handled 33,355,000 gallons against 30,810,000 in the corresponding period of 1937, a further increase of 12 per cent.

The oil receivers in Nashville use 26 tanks with a total capacity of 13,643,760 gallons. The barges employed, some 13 in number, have varying capacities up to 550,000 gallons.

Petroleum products reaching Nashville by barge are distributed not only in Nashville proper, a considerable percentage is shipped by rail within short distances at rates reduced because of the competition offered by trucks from Nashville. The loss to this company because of the river movement is, therefore, twofold, first a total loss on the consumption at Nashville and at nearby stations reached by trucks; second, that caused through a reduction from otherwise normal rates where rail service is used from Nashville.

The rate loss is illustrated in the following statement, which shows the rates from Nashville to a number of Middle Tennessee destinations—(1) in effect June 25, 1932; (2) as

they would be today but for truck competition and, (3) as they actually are:

[fol. 424]

	In effect 6-25-1932	Present normal rate	Truck competitive rate
Camden	25	26	18
Waverly	22	23	13
Dickson	19	20	9
Centreville	22	23	11
Hohenwald	25	26	17
Murfreesboro	21½	23	6½
Bell Buckle	26	28	12
Tullahoma	26	28	15
Shelbyville	26	28	12
Sparta	30½	32	18
Tracy City	30	32	20
Winchester	28	30	18
Fayetteville	30½	32	15
Petersburg	30½	32	14
Lewisburg	20	21	11
Columbia	19	20	9

On the great quantities of petroleum products used in Nashville proper now coming by water, the loss to the N. C. & St. L. may be estimated from the fact that if handled by rail the proportions of the through rates earned by this Company would range from 22 to 25 cents per 100 pounds.

Attached is a photograph of barges now employed in the described handling.

On the Tennessee River barge service for petroleum products has recently been established to Guntersville, Ala. It is yet too early to determine with exactness the result. It has been found, however, that a considerable movement is to Chattanooga.

It is expected that with the completion of the dam at Guntersville, oil will be barged to Chattanooga. It is known that river sites have been purchased or optioned by the principal oil companies.

It is estimated that barging oil on the Cumberland River reduces the revenue of the N. C. & St. L. approximately \$500,000 per annum, with this reduction clearly reflecting itself in the value of the N. C. & St. L. for purposes of taxation.

[fol. 425]

EXHIBIT No. 23

The Nashville, Chattanooga & St. Louis Railway

A statement of Revenue Passengers moving one mile, and Revenue Tons carried one mile on Class I Railroads for years 1920-1937, inclusive.

Year	Revenue passenger miles	Revenue ton miles
1920	46,848,667,987	410,306,209,802
1921	37,312,585,966	306,840,203,512
1922	35,469,961,582	339,285,347,571
1923	37,956,594,827	412,727,228,422
1924	36,090,886,478	388,415,312,335
1925	35,950,222,811	413,814,261,072
1926	35,477,524,581	443,746,487,348
1927	33,649,706,115	428,736,961,993
1928	31,601,341,798	432,915,184,526
1929	31,074,134,542	447,321,561,129
1930	26,814,824,535	383,449,588,491
1931	21,894,421,000	309,224,879,000
1932	16,971,044,000	233,977,009,000
1933	16,340,510,000	249,223,180,000
1934	18,033,309,000	268,710,507,000
1935	18,475,572,000	282,036,932,000
1936	22,421,009,000	339,245,826,000
1937	24,660,000,000	360,668,000,000
		80% of 1929

6 Months 1938 not available.

[fol. 426]

EXHIBIT No. 24

The Nashville, Chattanooga & St. Louis Railway

A Statement of Number of Revenue Passengers moving one mile and Number of Revenue Tons Freight moving one mile on The NC&StL Ry.

Year	Revenue passenger miles	Revenue ton miles
1920	188,096,216	1,327,761,605
1921	146,999,164	975,446,834
1922	134,651,804	1,197,443,204
1923	145,094,797	1,377,145,903
1924	136,849,020	1,311,457,197
1925	141,015,793	1,306,166,837
1926	129,053,819	1,325,604,755
1927	113,447,092	1,241,023,549
1928	98,425,482	1,368,340,410
1929	84,902,117	1,423,927,721
1930	63,188,708	1,251,832,276
1931	48,689,909	989,835,055
1932	38,780,705	740,393,369
1933	41,447,105	850,543,204
1934	50,917,374	848,010,679
1935	53,936,824	794,319,010
1936	62,579,396	936,923,172
1937	66,557,689	992,568,627
		69% of 1929
1938 (6 months)	25,665,342	437,684,254

[fol. 427]

EXHIBIT No. 28

The Nashville, Chattanooga & St. Louis Railway

A Statement of Average Age of NC&StL Equipment as of June 30, 1938, also Equipment Retired from Transportation Service since January 1, 1936 to June 30, 1938, and Equipment presently scheduled for Retirement.

(a) Average Age of Power & Equipment as of June 30, 1938.

Kind of equipment	No. of units	Average Age (Yrs.)
Steam Locomotives	194	26
Freight Train Cars	6,438	21
Passenger Train Cars	153	22
Work Equipment	388	17
Marine Equipment	5	14

(b) Units of Equipment retired from Transportation Service since January 1, 1936 to and including June 30, 1938.

Kind of equipment	No. of units
Steam Locomotives	22
Freight train cars	
Old 60 M capacity box cars	1,352
All other kinds of frt. cars	323
Total Freight Train Cars	1,675
Passenger Train Cars	16
Work Equipment	167
Marine Equipment	2
Total retirements	1,882

(c) Units of Equipment scheduled for retirement for service.

Kind of equipment	No. of units
Locomotives	1
Freight Train Cars	16
Work Equipment	10
Total	27

[fol. 428]

EXHIBIT No. 29

The Nashville, Chattanooga & St. Louis Railway

Ages of Major Shop Buildings and Major Freight Depots on The
Nashville, Chattanooga & St. Louis Railway

	Age (years)	Average age
Nashville:		
Machine Shop.....	48	
Boiler and Tender Shop.....	48	
Blacksmith Shop.....	48	
Foundry.....	48	
Passenger Car Shop.....	48	
Freight Car Shop.....	48	
Planing Mill.....	48	
Store House.....	48	
Freight Car Repair.....	48	
Round House.....	48	
Copper Shop.....	41	
Bolt Shop.....	39	
Upholster Shop.....	37	
Tin Shop.....	36	
Coaling Station.....	21	
Store House for freight car repairs.....	9	
Freight Car Repair Shed (rebuilt).....	5	
	—	39.3
Cravens: (Chattanooga, Tenn.)		
Round House.....	21	
Yard Office.....	31	
Office and Store House.....	24	
Blacksmith Shop.....	21	
Coaling Station.....	21	
	—	23.6
Hills Park: (Atlanta, Ga.)		
Round House—12 Stalls.....	20	
Round House—10 Stalls.....	11	
Master Mechanic's Office.....	19	
Mill Building.....	20	
Store House.....	20	
Wheel Shop.....	12	
Coaling Station.....	20	
	—	17.4
[fol. 429]		
Bruceton: (Tennessee)		
Round House.....	13	
Master Mechanic's Office.....	17	
Mill Building.....	17	
Coaling Station.....	17	
	—	16.0
Average age of the above shop buildings taken as a whole.....		29.4
Freight Depots at Principal Termini		
Chattanooga, Tenn.—250' long.....	59	
Chattanooga, Tenn.—114' extension.....	39	
Nashville, Tenn.....	38	
Paducah, Ky.....	14	
Memphis, Tenn.....	27	
	—	35.4

EXHIBIT No. 29—Continued

Freight Depots at Intermediate Points

	Age (years)	Average age
Marietta, Ga.	86	
Cartersville, Ga.	36	
Dalton, Ga.	86	
Rome, Ga.	40	
Bridgeport, Ala.	21	
Cowan, Tenn.	34	
Decherd, Tenn.	57	
Tullahoma, Tenn.	51	
Murfreesboro, Tenn.	71	
Shelbyville, Tenn.	46	
Huntsville, Ala.	45	
Gadsden, Ala.	42	
Dickson, Tenn.	56	
Bruceston, Tenn.	18	
McKenzie, Tenn.	26	
Martin, Tenn.	36	
Union City, Tenn.	59	
Jackson, Tenn.	47	
		46.5
Average age of depots at principal termini and intermediate points		44.1

[fol. 430]

EXHIBIT No. 30

A List of Agency Stations Discontinued by the N. C. & St. L. Since
January 1, 1928
Year 1928

Station	Date closed
Cartwright, Tenn.	Mar. 1
Danley, Tenn.	Apr. 15
Eads, Tenn.	Apr. 15
Hickory Withe, Tenn.	Apr. 15
Laconia, Tenn.	Apr. 15
Rock Island, Tenn.	Apr. 15
Victoria, Tenn.	Apr. 15
Warren, Tenn.	Apr. 15
Newsom, Tenn.	May 1
Darden, Tenn.	May 17
Anderson, Tenn.	May 25
Beech Bluff, Tenn.	May 25
Belfast, Tenn.	May 25
Bon Air, Tenn.	May 25
Hermitage, Tenn.	May 25
Kimmins, Tenn.	May 25
Lee, Tenn.	May 25
Maxwell, Tenn.	May 25
Quebeck, Tenn.	May 25
Silver Springs, Tenn.	May 25
Smartts, Tenn.	May 25

EXHIBIT No. 30—Continued

Year 1928—Continued

Station	Date closed
Vildo, Tenn.	May 25
Bass, Ala.	Aug. 15
College, Tenn.	Aug. 15
—ya, Ky.	Aug. 15
Fosterville, Tenn.	Oct. 1
Woodland Mills, Tenn.	Nov. 1
Halls, Ga.	Dec. 1
Hooker, Ga.	Dec. 1
Tilton, Ga.	Dec. 15
Total—30	

Year 1929

Clifty, Tenn.	Jul. 1
Ravenscroft, Tenn.	Jul. 1
Allens Creek, Tenn.	Aug. 15
Haley, Tenn.	Sept. 1
—us, Tenn.	Sept. 2
Bon Aqua, Tenn.	Nov. 1
Total—6	

Year 1930

Deposit, Ala.	Mar. 1
Eva, Tenn.	Mar. 1
Huron, Tenn.	May 25
Howell, Tenn.	June 1
Denver, Tenn.	Jul. 5
Tennessee City, Tenn.	Jul. 15
Beacon, Tenn.	Aug. 1
Beans Creek, Tenn.	Aug. 15
Chesterfield, Tenn.	Aug. 15
Leeville, Tenn.	Aug. 15
Walling, Tenn.	Aug. 15
Shellmound, Tenn.	Sept. 1
Mansfield, Tenn.	Sept. 15
Nunnely, Tenn.	Sept. 15
Orme, Tenn.	Sept. 15
Xuma, Tenn.	Sept. 15
Almo, Ky.	Oct. 1
Dexter, Ky.	Oct. 1
Sequatchie, Tenn.	Oct. 1
Mt. Juliet, Tenn.	Nov. 15
Long Island, Ala.	Dec. 1
Graysville, Ga.	Dec. 15
Tunnel Hill, Ga.	Dec. 15
Vinings, Ga.	Dec. 15
Total—24	

EXHIBIT No. 30—Continued

Year 1931

Station	Date closed
Buena Vista, Tenn.	Jan. 1
Ladds, Tenn.	Jan. 1
Belvidere, Tenn.	Jan. 15
Bellevue, Tenn.	Mar. 4
Atco, Ga.	Apr. 9
Kelso, Tenn.	May 15
Flintville, Tenn.	May 15
Perryville, Tenn.	June 15
Normandy, Tenn.	Jul. 1
Elora, Tenn.	Jul. 31
Christiana, Tenn.	Jul. 31
Antioch, Tenn.	Jul. 31

[fol. 431]

A List of Agency Stations Discontinued by the N. C. & St. L. Since
January 1, 1928

Twomey, Tenn.	Aug. 1
Bryant, Tenn.	Oct. 7
Bell Factory, Ala.	Oct. 15
Whitlock, Tenn.	Nov. 2
Cass, Ga.	Nov. 5
Resaca, Ga.	Nov. 6
Monteagle, Tenn.	Nov. 16
White Bluff, Tenn.	Dec. 31

Total—20

Year 1932

West Nashville, Tenn.	Feb. 29
Whiteside, Tenn.	Feb. 1
Luray, Tenn.	Feb. 15
Emerson, Ga.	June 15
Hardin, Ky.	July 14
De Rossett, Tenn.	July 14
Palmer, Tenn.	Aug. 1
Huntland, Tenn.	Aug. 15
Doyle, Tenn.	Aug. 15
Lavergne, Tenn.	Aug. 15
Coalmont, Tenn.	Sept. 1
Morrison, Tenn.	Sept. 1
Westport, Tenn.	Sept. 14
Summitville, Tenn.	Oct. 14
Boyce, Tenn.	Oct. 15

Total—15

Year 1933

New Market, Ala.	Apr. 14
Oakland, Tenn.	June 30

Total—2

EXHIBIT No. 30—Continued

Year 1934

Station	Date closed
Hollow Rock, Tenn.....	Aug. 31
Wildersville, Tenn.....	Nov. 30
Hobbs Island, Ala.....	Dec. 31
Total—3	

Year 1935

Centreville, Tenn.....	Apr. 15
Lebanon, Tenn.....	July 13
Tuckers Gap, Tenn.....	July 13
Total—3	

Year 1936

Campaign, Tenn.....	Apr. 6
Ralston, Tenn.....	Apr. 22
Parsons, Tenn.....	Oct. 31
Total—3	

Year 1937

None

First 6 Months of 1938

Cordova, Tenn.....	Mar. 1
Puryear, Tenn.....	Apr. 15
Mercer, Tenn.....	May 31
Kingston Springs, Tenn.....	May 31
Kennesaw, Ga.....	June 14
Total—5	

[fol. 432]

EXHIBIT No. 30

Recapitulation

Number of agencies abandoned

Year	Tennessee	Alabama	Georgia	Kentucky	Total
1928.....	25	1	3	1	30
1929.....	6				6
1930.....	17	2	3	2	24
1931.....	16	1	3		20
1932.....	13		1	1	15
1933.....	1	1			2
1934.....	2	1			3
1935.....	3				3
1936.....	3				3
1937.....					
1938 (First six mos. only).....	4		1		5
Total.....	90	6	11	4	111

Total number of Agency Stations as of January 1, 1928.....	197
Discontinued since January 1, 1928.....	111
Remaining Agencies July 1, 1938.....	86
Total number of Agencies as of September 1, 1920.....	231
Discontinued since 1920.....	145

[fol. 433]

EXHIBIT No. 33

The Nashville, Chattanooga & St. Louis Railway

Buildings and Facilities Owned by the N. C. & St. L. Rwy. Which Are Not Now Being Used for Railroad Purposes

	Chatta. Div.	Nash. Div.	P. & M. Div.	Atlanta Div.	Hunts- ville Div.	Nash. terms	Total
Tennessee							
Section Houses	51	66	38	1	30		186
Tool Houses	18	13	11		10		52
Depots	2	1			2	1	6
River Elevator (John- sonville)		1					1
Br. Watchm'n's House (Johnsonville)		1					1
Stock Pens	4	11	4		5		24
Alabama							
Section Houses	11				17		28
Tool Houses	3				5		8
Depot					1		1
Stock Pens	1				1		2
Georgia							
Section Houses				46			46
Tool Houses	1			13			14
Kentucky							
Section Houses			3				3
Stock Pens			2				2
Total	91	93	58	60	71	1	374

Recapitulation

Section Houses	263
Tool Houses	74
Stock Pens	28
Depots	7
River Elevator	1
Bridge Watchman House	1
Total	374

[fol. 434]

EXHIBIT No. 36

The Nashville, Chattanooga & St. Louis Railway

A Statement Showing Profit and Loss Credit Balance for the N. C. & St. L. Railway as of December 31, for the years 1931-1937, inclusive, and as of June 30, 1938.

Year	Credit Balance
1931	\$10,657,769.90
1932	10,153,598.15
1933	10,081,843.01
1934	9,612,162.72
1935	8,742,096.26
1936	8,702,826.70
1937	7,851,475.57
1938 (June 30)	7,803,927.31

(Here follows 1 photolithograph, side folio 435.)

1933	256,000	10060	3.93	36.54	9,354,240.00	16,800	461	2.74	801.23	13,460,664.00
1934	256,000	3600	1.41	29.42	7,531,520.00	16,800	533	3.17	916.54	15,397,872.00
1935	256,000	9760	3.81	21.83	5,588,480.00	16,800	501	2.98	909.94	15,286,992.00
1936	256,000	40440	15.80	30.52	7,813,120.00	16,800	1699	10.11	937.87	15,756,216.00
1937	256,000	11220	4.38	33.58	8,596,480.00	16,800	520	3.09	937.72	15,753,696.00
Weighted Average Seven Year Period	256,000	11821	4.62	30.14	7,715,840.00	16,800	593	3.53	900.93	15,135,624.00
Jan. 1 to July 31, 1938	256,000	6530	2.55	11.65	2,982,400.00	16,800	90	0.54	642.36	10,791,648.00

SUMMARY OF STOCK AND BOND AVERAGES			
Seven Year Period } to Dec. 31, 1937 }	Stock Bonds Total	Weighted Ave. Price	Market Value
		\$30.14	\$ 7,715,840.00
		900.93	15,135,624.00
			\$22,851,464.00
Seven Mos. Period } Jan. 1 - July 31, } 1938.	Stock Bonds Total	11.65 642.36	2,982,400.00
			10,791,648.00
			\$13,774,048.00



[fol. 436]

EXHIBIT No. 38

The Nashville, Chattanooga & St. Louis Railway

Statement Showing Failure of The N. C. & St. L. Ry. to Earn a "Fair Return"

The Transportation Act 1920 provided that carriers by rail under "honest, efficient and economical management" should be allowed to earn a "fair return" and the rate of "fair return" was fixed by the Interstate Commerce Commission as 5¾ percent on the value fixed by the Commission "for rate making purposes".

Years	"Fair return" based on 5¾%	Net railway operating income	Return actually earned (percent)	Deficit of net railway operating income to "fair return"
1931	\$5,185,017	\$822,215	0.912	\$4,362,802
1932	5,180,457	715,254	0.794	4,465,203
1933	5,152,930	992,602	1.107	4,160,328
1934	5,144,719	953,544	1.066	4,191,175
1935	5,137,932	523,010	0.585	4,614,922
1936	5,092,246	1,382,842	1.561	3,709,404
1937	5,126,808	840,290	0.942	4,286,518
Totals	\$36,020,109	\$6,229,757	0.994	\$29,790,352
Av. per year	5,145,730	889,965	0.994	4,255,765
Total deficit under "Fair Return" for 7 years				\$29,790,352
Average deficit per annum				4,255,765
Rate of Return as fixed by I. C. C. (Percent)				5.750
Rate of Return actually earned (Percent)				0.994
Deficit under "Fair Return" for seven years (Percent)				4.756

Note: "Net Railway Operating Income" is the result arrived at after deducting Railway Operating Expenses from Railway Operating Revenues, and with the further deduction of Railway Taxes, all other uncollectible railway revenues, and an addition or deduction, as the case may be, of Equipment Rents and Joint Facility Rents. It will be observed Net Railway Operating Income does not include Non-Operating Income, such as income from miscellaneous sources, nor deductions from Gross Income, such as Rents for Leased Roads, Interest on Funded Debt and other miscellaneous amounts. It is not the amount, as frequently misunderstood, available for dividends. For the N. C. & St. L. Railway the Net Railway Operating Income must first be applied to the payment of annual interest and rent charges of \$1,416,039.00 before anything is available for dividends or improvements to the properties.

The "Fair Return" is computed only on the value of Carrier property as inventoried by the I. C. C. as of June 30, 1916, brought up to December 31, 1937 by taking into account A & B and Retirements. Non-Operating property is not included.

(Here follows 1 pasted, Exhibit No. 42, side folio 437.)

[fol. 437]

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EXHIBIT No. 42

The Nashville, Chattanooga & St. Louis Railway
Nashville, TennesseeTax Accruals (Including Taxes on Non-Operating Property)—Interest on Bonds—Interest on Equipment Trust Notes—Rent for Leased Lines and Net Corporate
Income Years 1931 to 1937, Both Inclusive. (Since Last Dividends Were Paid in 1931)

Year	Railway Tax Accruals on Operating Property		Miscellaneous Tax Accruals on Non-Operating Property		Total Tax Accruals on Operating & Non-Operating Property		Interest on		Rent for Leased Roads	Net Corporate Income
	System	Tennessee	System	Tennessee	System	Tennessee	Bonds	Equipment Trust Notes		
1931	\$590,550.11	\$476,849.20	\$56,311.00	\$53,180.11	\$646,861.11	\$530,029.31	\$672,000.00	\$57,426.25	\$806,506.20	*\$419,425.22
1932	405,979.08	289,797.90	52,181.59	49,545.83	458,160.67	339,343.73	672,000.00	46,836.25	806,506.20	*434,184.75
1933	362,612.33	276,603.43	43,454.93	41,123.07	406,067.26	317,726.50	672,000.00	36,246.25	806,506.20	*292,326.33
1934	437,290.72	336,966.63	38,592.65	36,429.32	475,883.37	373,395.95	672,000.00	25,656.25	806,506.20	*351,939.15
1935	455,152.60	365,124.69	50,255.02	48,616.21	505,407.62	413,740.90	672,000.00	15,066.25	806,506.20	*791,459.83
1936	541,497.32	428,939.24	56,950.47	55,176.89	598,447.79	484,116.13	672,000.00	9,450.00	817,481.55	51,998.59
1937	877,158.54	710,880.94	55,622.33	53,997.64	932,780.87	764,878.58	672,000.00	18,907.50	806,131.89	*471,623.02
Totals	\$3,670,240.70	\$2,885,162.03	\$353,367.99	\$338,069.07	\$4,023,608.69	\$3,223,231.10	\$4,704,000.00	\$209,588.75	\$5,656,144.44	*\$2,708,959.71

* Paid in copy.

Note: Figures as to Tennessee taxes shown above include Tennessee's proportion of Federal taxes, and, therefore,
do not agree with figures shown on Exhibit 41 in which Federal taxes are set out separately.

[fol. 438] EXHIBIT No. 45.

The Nashville, Chattanooga & St. Louis Railway.

Average Number of Passenger and Freight Trains Operated Daily, and Average Number of Loaded and Empty Freight Cars Handled Daily for the Years 1929-1937, Inclusive, and the First Six Months of 1938.

Years	Daily average			
	Passenger Trains	Freight Trains	Loaded Cars	Empty Cars
1929.....	66	121	2549.3	1428.2
1930.....	50	109	2274.8	1438.8
1931.....	36	93	1823.4	1198.3
1932.....	30	77	1405.3	881.1
1933.....	28	80	1591.1	998.8
1934.....	26	85	1635.3	1015.6
1935.....	26	78	1519.3	788.9
1936.....	30	80	1690.3	803.0
1937.....	30	81	1725.7	807.2
1938 (6 Months).....	30	72	1571.0	851.1

[fol. 439]

EXHIBIT No. 46

The Nashville, Chattanooga & St. Louis Railway
Nashville, Tenn.

A Statement Showing a Comparison of Recommended Expenditures with Actual Expenditures for Maintenance of Way and Structure and Maintenance of Equipment for the Years 1934-1938, Inclusive, Actual Expenditures for 1938 Being Estimated

	1934		1935		1936		1937		1938	
	M. of W. & S.	M. of E.	M. of W. & S.	M. of E.	M. of W. & S.	M. of E.	M. of W. & S.	M. of E.	M. of W. & S.	M. of E.
Recommended Expenditures:										
M. of W. & S.	\$2,008,802	\$1,874,816	\$2,016,896	\$1,944,435	\$2,016,896	\$1,944,435	\$2,097,272	\$1,970,623	\$2,345,317	\$1,633,980 (Est.)
M. of E.	3,204,709	3,478,589	3,126,294	3,421,768	3,126,294	3,421,768	3,793,869	3,584,630	3,686,407	2,347,137 (Est.)
Total	\$5,213,511	\$5,353,405	\$5,143,190	\$5,366,203	\$5,143,190	\$5,366,203	\$5,891,141	\$5,555,253	\$6,031,724	\$3,981,111
Actual Expenditures:										
M. of W. & S.	\$1,758,410	\$1,749,396	\$1,944,435	\$1,944,435	\$1,944,435	\$1,944,435	\$1,970,623	\$1,970,623	\$1,970,623	\$1,633,980 (Est.)
M. of E.	2,973,322	2,950,665	3,421,768	3,421,768	3,421,768	3,421,768	3,584,630	3,584,630	3,584,630	2,347,137 (Est.)
Total	\$4,731,732	\$4,700,061	\$5,366,203	\$5,366,203	\$5,366,203	\$5,366,203	\$5,555,253	\$5,555,253	\$5,555,253	\$3,981,111
Deficit Actual as Compared with Recommended Expenditures:										
M. of W. & S.	\$250,392	\$125,420	\$72,461	\$72,461	\$72,461	\$72,461	\$126,649	\$126,649	\$126,649	\$711,337
M. of E.	231,387	427,924	295,474 (over)	295,474 (over)	295,474 (over)	295,474 (over)	209,239	209,239	209,239	1,339,276
Total	\$481,779	\$553,344	\$223,013 (over)	\$223,013 (over)	\$223,013 (over)	\$223,013 (over)	\$335,888	\$335,888	\$335,888	\$2,050,613

[fol. 440] EXHIBIT No. 47

The Nashville, Chattanooga & St. Louis Railway.

Statement of Number, Age and Condition of Locomotives and Cars of The N. C. & St. L. Railway, July 15, 1938

Locomotives

Our total ownership of 194 locomotives classified into seven general groups, with the number of locomotives, average age, power and weight of each group and service in which used, are shown in the following tabulation:

Classification or Type	No. Owned	Age in Years	Av. Age	Av. trac. power (pounds)	Av. wt. eng. & tender (tons)	Service use
Ten wheel.....	13	30 to 40	34	29520	137	(1)
Consol.	84	27 to 39	34	37842	139	(2)
Decapod.....	5	20	20	45000	167	(3)
Pacific.....	20	23 to 26	25	37775	193	(4)
Mountain.....	18	8 to 19	14	59572	266	(5)
Mikado.....	51	15 to 23	20	58308	224	(6)
Mallet.....	3	23	23	99000	318	(7)

- (1) Accommodation passenger trains between Paducah and Hickman and in branch line freight service.
- (2) Branch line freight; light local runs on main line; and switching.
- (3) Switching.
- (4) Main line passenger.
- (5) Main line fast freight and passenger.

[fol. 441]

- (6) Main line freight.
- (7) Mountain pusher.

The average age of our 194 locomotives is 26 years, but 87 or 45% of the total are more than 30 years old. 109 or 56% are 25 or more years old; and 164 or 85% are 20 or more years old; leaving 30 locomotives or only 15% of the total which are less than 20 years old.

Of the 30 locomotives less than 20 years old, 25 are from 13 to 19 years old, the remaining 5 being the last locomotives we bought in 1930, 8 years ago.

Of the total of 194 locomotives, 17 are now in unserviceable condition. That is, 17 locomotives either now in the shops or awaiting general repairs.

Because of lack of business, our locomotives have not been used as intensively in recent years as in years gone by. For example, in the five years 1926 to 1930, inclusive, we owned an average of 255.8 locomotives, making an average of 29,736 miles per year per locomotive. In the five years

1933 to 1937, inclusive, when the average number of locomotives owned was only 208.6, the average miles per year per locomotive was only 25,232. In the earlier five year period, our locomotives were utilized on the average to an 18% greater extent than in the last five years.

[fol. 442] At present there are 30 locomotives, including engines held for relief purposes and for a shopping margin, being used on our branch lines, leaving 164 locomotives or about 85% of our total ownership which do not now operate upon branch lines.

Freight Cars

We own 6344 freight cars, the average age of which is 21.23 years. 1216 or 19% of these are 30 years old or older. 2939 or 46% are more than 25 years old. 3871 or 61% are more than 20 years old, leaving only 2473 or 39% that are less than 20 years old. Of this latter group of 2473, 545 were acquired or rebuilt last year. The remaining 1928 were acquired from 12 to 19 years ago. There are now stored in bad order, awaiting heavy repairs, 1026 cars constituting 16% of the 6344 cars owned.

Of the 1216 cars 30 or more years old, 366 are either now barred from interchange or will be so barred after January 1, 1939 because they do not come up to the standards established by the Association of American Railroads. This means that these cars cannot be used for handling shipments between points on our line and points on other railroads. It is doubtful if we would be justified in continuing to maintain these cars merely for on-line service even if we should enjoy sufficient on-line business for which [fol. 443] these cars would be suitable.

Of the 2939 cars more than 25 years old, 366 are those referred to in the preceding paragraph and 1335 are box cars of such construction as to make them expensive to maintain. They are shorter than cars of more recent construction. For these reasons and because of their age, we are now giving serious consideration to the question of whether or not we would be justified in continuing these cars in service. In other words, except for their scrap value, it is doubtful whether they can now be considered an asset.

558 of the 1026 cars now stored in bad order are cars of the type referred to in the preceding paragraph or

cars of the type which will be barred from interchange after January 1, 1939, leaving only 468 of these 1026 bad order cars which we are likely to repair and restore to service.

Passenger Cars

We own 153 passenger train cars, including baggage and postal cars. Of this number 59 or 38% are all-wood cars suitable only for use in mixed trains on our branch lines and for the two accommodation trains we operate in each direction daily between Paducah and Hickman, Ky. via Bruceston, Tenn. Their average age is 31 years.

[fol. 444] Of the 59 all-wood cars, 25 are now in unserviceable condition. We are not likely to have any need for them that would justify spending money to repair them. Except for their scrap value, they are no longer an asset.

Of the remaining 94 cars, 15, constituting 10% of our total ownership, are steel underframe cars, 20 years old on the average, and 79, which is only 52% of all our passenger cars, are all-steel cars ranging from 15 to 23 years old. The average age is 19 years. All of the 79 all-steel cars and all but one of the 15 steel underframe cars are now in serviceable condition.

So far as safety of operation is concerned, we have maintained these cars in first class condition but, because of lack of funds, have necessarily deferred during recent months painting, redecorating and other features of maintenance in which safety is not involved.

[fol. 445]

EXHIBIT No. 48

A Statement Regarding Depletion of Natural Resources Along the Line of the N. C. & St. L. Rwy.

The true value of a railroad property as a going concern, privately owned, depends upon whether or not it may, "prudently and economically" managed, be operated with profit to its owners. To this general rule there can be no exception, and whether or not a railroad may be operated with profit depends, more or less, upon the natural resources of the territory through which it runs. To this rule the exceptions are few and of small importance:

The importance of natural resources as an element of

railroad value is illustrated by many well known instances—for example, coal in the Pocahontas and New River sections of Virginia, and West Virginia, where it is the foundation of the traffic handled by such roads as the C. & O. and N. & W.; iron ore in the Superior District of the Great Lakes; pine lumber to the roads in the Coastal Plain of the South; petroleum to the Texas and Oklahoma; minerals to Pennsylvania and Alabama, etc.

With the N. C. & St. L. "natural resources," as here defined, include principally products of mines and products of forest, with differences more or less substantial between the two. The measure of the respective value of these two classes of traffic is determined by quantity, quality, availability and depletion, with depletion itself measured by the extent to which it is complete, or may be and is made good by renewal.

Products of Mines

With the N. C. & St. L. "Products of Mines" are carried under general heads; with the total tonnage representing approximately 27 to 30 percent of the total of all tonnage. Of this, roughly, two-thirds originate on this road while one-third is received from connecting lines.

The principal items in this classification are—(1) bituminous coal; (2) coke; (3) clay, gravel, sand and stone. For all practical purposes, the quantities of the latter are unlimited, and depletion does not enter; it is, however, a factor of importance with respect to coal and coke, which in turn are nearly fifty percent of the total in this group.

Nelson, in his "Southern Tennessee Coal Field," published by the Tennessee Division of Geology, says:

"It was in 1855 that our coal industry first assumed its true importance, due to several causes, all depending on the added transportation facilities, especially to the advent into this region of the Nashville, Chattanooga & St. Louis Railway. This was the year the first coal was mined by the Sewanee Company, also the old "banks" in the Raccoon Mountains (Etna Mines) increased their output enormously."

[fol. 446] The first production of coal on the N. C. & St. L. Rwy., was in Marion, Franklin and Grundy Counties, at Tracy City, Sewanee, Etna and Whiteside. At one time

this production was relatively and actually important as an item of the Company's total traffic. In later years, and until a comparatively recent time, coal was mined in substantial quantities in White county at mines located on an extension from Sparta to coal fields at Bon Air, De-Rossett, Ravenscroft, Eastland and Clifty. Coal mining was also developed on a branch of the N. C. & St. L. Rwy., built from Bridgeport up to Sequatchie Valley through the Counties of Marion, Sequatchie and Bledsøe.

There were originally extensive coke ovens both at Etna, Tracy City and on the Sequatchie Branch near Victoria.

During the years, depletion has occurred to an extent which seriously affects the value of this railroad. The mines at Etna are no longer operated, although at one time they shipped blacksmith coal practically to every state in the Union. There are no longer coke ovens at Victoria, Etna or Tracy City, while the mines from which the coal was coked no longer operate. In fact, in the Sequatchie Valley the coal production is largely confined to the single point of Whitwell, for while there are small operations elsewhere, the total produced is not consequential, either actual or potentially.

Mines no longer operate either at Tracy City or Sewanee, the remaining coal from Franklin and Marion Counties comes from Coalmont and so-called "Mine B," the former 7 miles beyond Tracy City, the latter 6 miles.

The time was when Bon Air produced probably the finest grade of domestic coal ever mined in Tennessee. This seam is exhausted, while miles in White County, once important—Eastland, Clifty, Ravenscroft, DeRossett—are abandoned, and, as in the case also of Bon Air, the railroad line reaching them has been torn up.

What all this means from the standpoint of railroad value may be partly judged by the following figures: No further back than 1915 the Etna-Whiteside mines shipped 25,114 tons, Bon Air 50,479, Ravenscroft 64,518, Clifty 86,512. The last shipment (150 tons) from Etna-Whiteside was in June 1937.

Of course the loss value goes further than coal alone. It extends to every traffic movement, in and out, as these were made in the life and business of the territory previously served.

In the case of coal, depletion when it occurs, is entire. No development does or can take its place. The loss, there-

fore, is permanent and directly affects the true value of the railroad which served or serves the field. Nor is it an answer to say that the production shifts to stations in the same or in other fields. It remains a fact that a natural product is depleted or the potential quantity reduced either without hope of renewal.

[fol. 447]

Forest Products

While the elements of value to a railroad (quantity, quality, availability and depletion) in the case of forest products are, for the most part, the same, or nearly the same, as those of products of mines, there are differences. It may even be true that originally dense forest growth is not an asset of value. To the extent the pioneer finds it necessary to clear the land, a standing forest has small, if any, value. In Tennessee, however, that period passed years ago. The forest products now produced, or hereafter to be produced on this Railway, come almost entirely from non-agricultural lands, principally thin lands on the Highland Rim and lands in the mountain section without agricultural value.

It is true also that the depletion of forest products is not necessarily final as is always the case with products of mines, yet the period of renewal with the former is so slow and uncertain as to make it count for little in the problem of this traffic as a continuing asset of railroad value.

The hardwoods in Tennessee were once among the finest in the country. Oak, hickory, poplar and other varieties were in abundance and of high quality. Moreover, they were available, and availability is a feature of first consequence. Gradually the forests near the rails were cut out, forcing the producer farther and farther back. This handicap so far he has been able, in an important way, to meet because of the opening of roads and the use of motor trucks rather than animal power. Nevertheless, as these facilities are extended their value grows less, the timber supply diminishes, with renewals far less than quantities cut.

Unfortunately with this destruction there is little compensation in the latter availability of the territory for Agricultural use. The U. S. Department of Agriculture, Forest Service Circular 116, titled "The waning Hardwood Supply and the Appalachian Forests" says:

"The Appalachian Mountains must have fully half of the country's present supply of hardwood, in spite of the

fact that heavy cutting has been going on in them for over a hundred years.

There are two main reasons why this region has borne such heavy cutting and still contains so much of the supply. In the first place, the mountains are non-agricultural. There has been no wholesale tendency to clear them for farming. Profitable farming exists, as a rule, only in the valleys and on the lower slopes. Many sporadic attempts have been made to farm the higher mountains, especially in the Southern Appalachians, but the farms have been small and generally unprofitable. After the pioneer's patience or endurance has been exhausted, the forest has slowly crept back and reclaimed the land, from which it never should [fol. 448] have been removed. In the second place, inaccessibility accounts for the continued forest character of the Appalachian region. With the low prices which prevailed until a few years ago, it did not pay to bring the timber down from the higher mountains. So it was allowed to remain.

While other causes may have had local influence, these conditions in the main account for the fact that the Appalachians have maintained their hardwood production. Nevertheless, some of the Appalachian States have gone back badly. Kentucky and Tennessee show heavy declines. In these States the lumbermen have gone farther and farther into the forest, until, even in the most inaccessible parts, little virgin growth remains.

The plain truth is that in the Appalachians, as in the other regions, the hardwood lumbermen are working upon the remnants. The supply is getting short and the end is coming into sight."

In U. S. Department of Agriculture, Circular 134, Henry S. Graves, Forester, writes:

"Forest depletion is injurious long before the last tree is cut and long before all but the last center of production is exhausted. Oftentimes our minds are centered on total production and general markets, overlooking the relation of the forest and its industries to the life of the regions and the communities in which they are located. When local resources are so depleted that industries close, the question of vanishing supplies takes on a new significance. And that is exactly what is happening in hundreds of communities. The Forest supplies are used up; the chief industry a saw-

mill, a box factory, or a wood-working establishment closes. Subsidiary industries dependent on the primary undertaking have to close also. And what is more, the land formerly producing the timber, if nonagricultural, is left in an unproductive condition and a burden for many years on the community."

The loss to this Railway of forest products as an item of traffic, direct or as the source of other traffic from forms of community life and industry, is in part indicated by the following statement which gives the total tons produced on this Railway in the years named.

[fol. 449]

Years	Tons
1918	544,695
1919	688,670
1920	764,736
1921	430,392
1922	534,288
1923	898,185
1924	775,116
1925	719,167
1926	700,268
1927	793,852
1928	627,869
1929	625,489
1930	424,609
1931	253,693
1932	124,869
1933	297,264
1934	220,250
1935	240,403
1936	348,407
1937	355,705

Further, by the fact that even in 1937 the total of forest products was 6.6 percent of its entire traffic.

In the study of these figures there should be borne always in mind the fact of the continuing degree of inaccessibility. In other words, loss in the final quantity possible of movement.

It is certain that in this element of depletion, both as it attends products of mines and products of forest, there is an element of high importance in determining the true value of the N. C. & St. L. Rwy.

[fol. 450]

EXHIBIT No. 50

The Nashville, Chattanooga & St. Louis Railway

Bridges Under "Slow Orders" Which Should Be Rebuilt and Age of Each

Bridge No.	Name	Division	Built	Slow Order	Remarks
30.6	North-Stones River	Chattanooga	1902	20 MPH	On Falsework
23.1	Tennessee River (Draw Span)	"	1890	20	"
16.9	Little Sequatchie	Seq. Valley Rr.	1909	20	"
7.5	Chattahoochee	Atlanta	1892	35	"
45.6	Etowah River	"	1892	35	"
83.7	Oostanaula River	"	1892	15	"
2.8	Island Creek	Memphis	1902	20	"
77.6	Tennessee River (Draw Span)	Nashville	1893	20	"

Bridges Now on Falsework, Which Should Be Rebuilt and Which Would Have Drastic "Slow Orders" If It Were Not for Falsework. Also Age of Each

111.0	Chickamauga Creek	Atlanta	1891	On Falsework	
112.1	"	"	1891	"	"
119.3	"	"	1892	"	"
123.6	"	"	1892	"	"
128.3	"	"	1891	"	"
129.1	"	"	1891	"	"
129.5	"	"	1891	"	"
4.5	Richland Creek	Nashville	1890	"	"
5.3	"	"	1889	"	"
5.7	"	"	1889	"	"
7.5	Cattle Pass	"	1898	"	"

(Here follows 1. photolithograph, side folio 451.)

EXHIBIT NO. 51

MARKET VALUE OF NC&STL RAILWAY STOCK AND BONDS FOR THE YEARS 1914, 1915, AND 1916 (A)

Year to June 30	STOCK			BONDS			Total Value
	Outstanding	Average Sale Price	Market Value	Par Value	Outstanding Total 5's and 6's	Average Sale Price	Market Value of 5's and 6's
1914	160,000	\$139.50	\$22,320,000	\$16,000,000	9542	1916-6's \$111.00 7606-5's 105.68	\$2,148,960.00 8,038,020.80
1915	160,000	127.00	20,320,000	16,000,000	9522	1916-6's 110.50 7606-5's 104.56	2,117,180.00 7,952,833.60
1916	160,000	134.50	21,520,000	16,000,000	11001	1895-6's 110.25 9106-5's 105.62	2,089,237.50 9,617,757.20
Totals			\$64,160,000				
Three Year Ave.			\$21,386,666	\$16,000,000			\$10,021,666.66

COMPARISON OF STOCK AND BOND VALUES FOR PERIODS SHOWN BELOW

	STOCK		BONDS		TOTAL
	Market Value	Par Value	Market Value	Par Value	
3 Yr. Period to 6-30-1916 (A)	\$21,386,666.66	\$16,000,000.00	\$10,654,663.03	\$10,021,666.66	\$32,041,329.69
7 Yr. Period to 12-31-1937 (B)	7,715,840.00	25,600,000.00	15,135,624.00	16,800,000.00	22,851,464.00
7 Mos. Period to 7-31-1938 (B)	2,982,400.00	25,600,000.00	10,791,648.00	16,800,000.00	13,774,048.00

(A) - Market Value computed by applying the average of high and low quotations for each year, as reported in "Poors Manual", to the total shares and bonds outstanding at the close of each year.

STOCK	Market Value	Par Value	BONDS			
			Outstanding Total	Average Sale Price	Market Value of 5's and 6's	Par Value All Outstanding Bonds
	\$22,320,000	\$16,000,000	9542	1916-6's \$111.00 7606-5's 105.68	\$2,148,960.00 8,038,020.80	\$10,186,980.80
	20,320,000	16,000,000	9522	1916-6's 110.50 7606-5's 104.56	2,117,180.00 7,952,833.60	10,070,013.60
	21,520,000	16,000,000	11001	1895-6's 110.25 9106-5's 105.62	2,089,237.50 9,617,757.20	11,706,994.70
	\$64,160,000					\$31,963,989.10
	\$21,386,666	\$16,000,000				\$10,654,663.03
						\$10,021,666.66

COMPARISON OF STOCK AND BOND VALUES FOR PERIODS SHOWN BELOW

	STOCK		BONDS		TOTAL	
	Market Value	Par Value	Market Value	Par Value	Market Value	Par Value
6.66	\$16,000,000.00		\$10,654,663.03	\$10,021,666.66	\$32,041,329.69	\$26,021,666.66
0.00	25,600,000.00		15,135,624.00	16,800,000.00	22,851,464.00	42,400,000.00
0.00	25,600,000.00		10,791,648.00	16,800,000.00	13,774,048.00	42,400,000.00

(A) - Market Value computed by applying the average of high and low quotations for each year, as reported in "Poors Manual", to the total shares and bonds outstanding at the close of each year.

(B) - Market Values computed from Weekly summaries of daily sales as reported in the Commercial and Financial Chronicle.

June 30	Outstanding	Price	Value	Value	Total	5's and 6's	Price	5's and 6's	Value
1914	160,000	\$139.50	\$22,320,000	\$16,000,000	9542	1936-6's 7606-5's	\$111.00 105.68	\$2,148,960.00 8,038,020.80	\$10.18
1915	160,000	127.00	20,320,000	16,000,000	9522	1916-6's 7606-5's	110.50 104.56	2,117,180.00 7,952,833.60	10.07
1916	160,000	134.50	21,520,000	16,000,000	11001	1895-6's 9106-5's	110.25 105.62	2,089,237.50 9,617,757.20	11.70
Totals			\$64,160,000						\$31.96
Three Year Ave.			\$21,386,666	\$16,000,000					\$10.65

COMPARISON OF STOCK AND BOND VALUES FOR PERIODS SHOWN BELOW

	STOCK		BONDS		TOTAL	
	Market Value	Par Value	Market Value	Par Value	Market Value	Par Value
3 Yr. Period to 6-30-1916 (A)	\$21,386,666.66	\$16,000,000.00	\$10,654,663.03	\$10,021,666.66	\$32,041,329.69	\$26,021,666.66
7 Yr. Period to 12-31-1937 (B)	7,715,840.00	25,600,000.00	15,135,624.00	16,800,000.00	22,851,464.00	42,400,000.00
7 Mos. Period to 7-31-1938 (B)	2,982,400.00	25,600,000.00	10,791,648.00	16,800,000.00	13,774,048.00	42,400,000.00

(A) - Market Value computed by applying the average of high and low quotations for each year, as reported in "Poors Manual", to the total shares and bonds outstanding at the close of each year.

(B) - Market Values computed from Weekly summaries of daily sales as reported in the Commercial and Financial Chronicle.

[fols. 452-453] EXHIBIT No. 9 TO BILL OF EXCEPTIONS

Before the Railroad and Public Utilities Commission of Tennessee.

In re: Valuation of the N., C. & St. L. Railway for purposes of taxation, years 1938-1939.

AFFIDAVIT OF CHARLES BARHAM

[fol. 454] AFFIDAVIT OF CHARLES BARHAM, VICE-PRESIDENT AND TRAFFIC MANAGER, IN RE VALUATION OF PROPERTIES OF THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY FOR TAXATION PURPOSES FOR THE YEARS 1938-39

STATE OF TENNESSEE,

County of Davidson:

I, CHARLES BARHAM, being duly sworn, state as follows:

I am Vice-President and Traffic Manager of The Nashville, Chattanooga & St. Louis Railway, having held that position ten years. Before election to that office for five years I was Chairman of the Southern Freight Association, a voluntary organization of railroads in the southeast handling matters of joint interest in connection with freight rates, rules and regulations. Prior to that time, for 23 years, I was Assistant General Freight Agent and General Freight Agent of this Railroad. Practically my entire active business life of 54 years has been spent in railroad work, chiefly traffic.

I

The value of a railroad property is largely determined by the profit it is able to earn from the traffic it handles. Any profit, or its absence, is directly affected, and to a great extent controlled, by the character and volume of this traffic.

Changes in traffic by reduction in volume, or in its character, cannot be followed by proportionate reductions in expense, overhead or operating. The cost of railroad operation [fol. 455] is fixed partly by the size of the investment necessary to create and maintain a going concern, principally by taxes paid, rates of wages, working conditions, business methods, and other details controlled by public

regulatory bodies. While this is a statement of obvious fact, nevertheless it is one generally overlooked or ignored.

Following the business depression subsequent to the operation of railroads by the Federal Government during and after the World War period, it became apparent railroads could, under prevailing conditions, no longer proportionately participate in any increase of business in this country. The general business recovery from this depression reached its peak in 1929, yet it is true that the volume of railroad freight traffic had remained practically stationary during several of the preceding years, with, at the same time, a gradual falling average rate per ton per mile. This latter resulted partly from blanket rate reductions made by the Interstate Commerce Commission in 1922, partly from a gradual readjustment downward of particular rates to meet competitive conditions, and largely from the loss of local traffic to highway carriers. This condition last named was particularly hurtful in that it created a coincidence between lessened volume and lower charges on the freight traffic that remained.

Since 1929 we have had "depressions" and "recessions" with intermittent partial recoveries. With each decline it was hoped the railroads had reached the bottom, only to find [fol 456] that the next month or the next year brought a greater deficit or lack of profit.

II

The following table shows the tons of freight handled, gross freight revenue, the return per ton per mile of this Company since 1923, and will indicate the seriousness of the downward trend:

Year	Tons of Revenue freight carried one mile	Mills of revenue per ton per mile	Freight revenue
1923	1,377,145,903	13.09	\$18,027,477.00
1924	1,311,457,197	13.0	17,044,426.00
1925	1,306,166,837	13.26	17,617,770.00
1926	1,325,604,755	13.40	17,764,342.00
1927	1,241,023,549	13.82	17,151,537.00
1928	1,368,340,410	13.17	18,015,059.00
1929	1,423,927,721	12.77	18,180,107.00
1930	1,251,832,276	12.35	15,462,401.00
1931	989,835,055	12.41	12,284,179.00
1932	740,393,369	12.49	9,250,963.00
1933	850,543,204	12.22	10,391,187.00
1934	848,010,679	12.56	10,507,806.00
1935	794,319,010	12.39	9,976,900.00
1936	936,923,172	12.33	11,555,569.00
1937	992,568,627	11.63	11,545,556.00

As will be seen, the character of loss has been twofold, (a) in total revenue, (b) in total tons handled; further, that while the volume decrease was 27.25 percent, the revenue decrease was 35.95 percent.

Throughout this testimony it should be borne in mind that since August 1931 no dividends have been paid by this Company to its stockholders, and that the dividend of 1931 was paid from the earnings of previous years. In other words, in that time the owners of the property have received [fol. 457] exactly nothing, despite the modest total of their stock. In that period the net result of the Company's operations has been one of almost continuous deficits, as appears from the following statement of net corporate income,—that is, net operating revenue after the deduction of interest charges, taxes and rentals:

1931, deficit	\$419,425.22
1932, deficit	434,184.75
1933, deficit	292,326.33
1934, deficit	351,939.15
1935, deficit	791,459.83
1936, credit	51,998.59
1937, deficit	471,623.02
Total deficit	\$2,760,958.30

As will be seen, in one year only was there a profit, and then in insignificant amount.

These results were had despite increased rates during a portion of the period, in the form of emergency charges allowed by the Interstate Commerce Commission, the latter expiring December 31st, 1936.

Here it is appropriate to point to the fact that the general increase in rates authorized by the Interstate Commerce Commission and by the Railroad and Public Utilities Commission of Tennessee, which became effective interstate and intrastate March 28th, 1938, has been seriously misunderstood by the general public. The belief seems to be that this increase was ten percent; the fact is that ten percent was allowed in certain cases only, with five in others and none at all on items of substantial importance. It is impossible at this date to calculate with mathematical accuracy the actual average percentage of increase thus had, but a conservative estimate with respect to south-

ern traffic, including that of this railroad, justifies the statement that the increase in revenue so produced will not exceed 5.7 percent.

Much of what has happened in recent years may be primarily traced to a lack of freight and passenger traffic, but this itself, and much more, result from peculiar and special conditions which affect the earning power and, therefore, the taxable value of this railroad. These adverse conditions were, in fact, present during the years immediately preceding the boom of 1929, with their effect, however, screened by a general rise in business volume which made it possible for railroads, in a measure, to maintain their solvency, even while not reasonably sharing in the prevailing prosperity. The effect of these conditions on net revenue and income was also cushioned by remarkable improvements made in operating efficiency and economy, largely through the investment of new capital in physical facilities. With an abrupt general business decline of such proportions that not even drastic operating economies could keep pace with it, with intensified competition by other means of carriage everywhere, the depression through which we have passed, and from which we continue to suffer, serves to throw in high relief the peculiar difficulties that surround the business of railroading.

III

The fundamental difficulty, lack of remunerative traffic [fol. 459] in sufficient volume, is chiefly due to:

1. Increased competition with other means of transport not effectively regulated in the public interest, while at the same time heavily subsidized from the public purse.
2. Inability of the railroads, because of rigid regulation, to meet this competitive situation as and when it arises without disastrously affecting other established and justified rate structures.

Through a combination of these causes there has been a progressive loss of higher rated freight traffic to subsidized competing agencies, with also a reduction in railroad passenger travel, the latter in some instances amounting to disappearance.

These causes, present with all railroads, have been, and are, active in reducing the traffic, the revenues, gross and

net, and, therefore, the taxable value of this railroad. In addition, local situations, among them a large branch line mileage, almost wholly in Tennessee, cross-drained by main state highways running at right angles, have, with this railway, intensified the effect of the general factors named.

The mileage of the N., C. & St. L. Railway is made up of the following main line and branches:

	Main Line	Branch
Chattanooga Division, including		
Huntsville and other branches	151.71	343.00
Nashville Division and branches	171.51	60.78
P. & M. Division	229.87	—
W. & A. Division and branch	136.85	18.14
Total	689.94	421.92

[fol. 460] The total miles of main track operated, excluding the so-called "West Nashville Branch" of 3.65 miles used exclusively in terminal switching movements, are 1,111.86, of which 62 per cent is main line, 38 per cent branch. Of the total branch mileage, 314.39 miles (74.5 per cent) are in Tennessee.

The mileage of the individual branch lines is as follows:

Shelbyville Branch	8.44 miles
Sequatchie Valley, including Ormo Branch	68.10 "
Decherd-Columbia Branch	85.94 "
Elora-Gadsden Branch	80.48 "
Tullahoma-Sparta Branch	60.86 "
Tracy City Branch	39.18 "
Centreville Branch	60.78 "
Rome Branch (W. & A. Division)	18.14 "
Total	421.92 miles

This statement, nominally correct, may, without explanation, mislead. The branch line mileage shown should actually include the Nashville Division, Martin, Tenn., to Hickman, Ky., 30 miles and the P. & M. Division, Bruceton, Tenn., to Paducah, Ky., 85 miles. Between Martin and Hickman there is no through service; between Bruceton and Paducah the service is so limited as, in fact, to be that of a branch. In other words, the mileage of the N., C. & St. L. Railway actually divides—Main Line 52, Branch 48 per cent.

Once profitable, these branches now drain the Company's resources, with small prospect of future improvement. Generally, they are at right angles to the main line, while hard-surfaced highways run from their stations direct to principal trading and marketing centers. In addition, these [fol. 461] branches as well as the main line itself are paralleled by like highways. Because of this physical situation, the remaining branch traffic is so thin that passenger trains are not operated on any of them. The limited service that remains is necessarily combined freight and passenger, with gross earnings from freight greatly reduced, and from passenger traffic practically nil.

These features of location and highway competition may be seen from the attached copy of the latest State Highway Department "Road Map." On this the lines of the N., C. & St. L.—main and branch—are shown in color, branch lines appearing in red.

The service given on these branches is as follows:

Shelbyville Branch, 8.44 miles: One mixed train makes two round trips daily, except Sunday, between Shelbyville and the main line junction, Wartrace.

Sequatchie Valley Branch, 68.10 miles. One mixed train each way, three days per week (the service in the opposite direction is on alternate days) between Bridgeport and Pikeville, with an additional mixed train on alternate days (tri-weekly), between Bridgeport and Whitwell.

Decherd-Columbia-Gadsden Branch, 166.42 miles: Between Decherd and Columbia one mixed train daily, except Sunday, in each direction, with an additional mixed train, daily except Sunday, between Decherd and Elora, the latter serving Alabama points on the Huntsville Division.

[fol. 462] Tullahoma-Sparta Branch, 60.86 miles: One mixed train in each direction, daily except Sunday, between Tullahoma and Sparta.

Tracy City Branch, 39.18 miles: One mixed train in each direction, daily except Sunday, between Cowan and Palmer.

Centreville Branch, 60.78 miles: One mixed train tri-weekly (the service in the opposite direction is on alternate days) between Dickson and Allens Creek.

Rome Branch, 18.14 miles: One mixed train makes two round trips, daily except Sunday, between Rome and Kingston, Ga.

It is said above that the gross passenger revenues of these trains are "practically nil". For the latest month of record as this is written, May 1938, they were:

Shelbyville Branch, average per day	\$3.31
Sequatchie Valley, average per day	1.57
Columbia Branch, average per day	6.16
Huntsville Branch, average per day	5.22
Sparta Branch, average per day	5.66
Centreville Branch, average per day	.44
Rome Branch, average per day	2.53

The above are totals for all the schedules operated. Expressed in another way, they show:

Shelbyville Branch, four trains earning per mile 14, 8, 11 and 9 cents, respectively, for a haul of 8.44 miles.

Sequatchie Valley Branch, four trains earning 1, 2, 2 and 2 cents, respectively.

Columbia Branch, four trains earning 3, 3, 4 and 2 cents, respectively.

[fol. 463] Huntsville Branch, four trains earning 8, 6, 2 and 2 cents.

Sparta Branch, two trains earning 5 and 5 cents.

Centreville Branch, two trains earning 7 mills.

Rome Branch, four trains earning respectively 9 mills, 4, 7 and 3 cents per mile.

In another part of this affidavit a more extended statement is made with respect to total system passenger earnings and the extraordinary losses that have occurred. While these losses may fairly be described as "extraordinary", or even spectacular, they are, in fact, much less significant than is the loss of freight traffic. To the latter, in greatest part, may be attributed the state of fact next recited.

IV

The total mileage of the N. C. & St. L. in 1928 was 1,259.81. There has since been abandoned as main track 144.30 miles, of which 127.72 were abandoned pursuant to authority of the Interstate Commerce Commission, and 16.58 miles of main track reclassified as side track. Of the 127.72 miles above, 124.87 were actually dismantled and 2.85 miles reclassified as side track. This dismantlement details as follows:

	Miles dismantled	Date operation discontinued.
Middle Tennessee & Alabama, between Fayetteville and Capshaw.....	36.82	April 20, 1929
Swan Creek Spur, part of Centreville Branch between Rochelle and Bond, Tenn..... [fol. 464]	1.90	July 31, 1930
Swan Creek Spur, part of Centreville Branch between Centreville and Rochelle, and Stewart and Arnold.....	9.10	Sept. 1, 1931
Pryor Ridge Spur, part of Tracy City Branch from Tracy City to Pryor Ridge, includes Flat Branch and "Q" Mines.....	5.25	January 15, 1936
Lebanon Branch between Lebanon and Nashville.....	26.96	July 14, 1935
McMinnville Branch between DeRossett and Clifty.....	8.20	March 11, 1935
Perryville Branch between Lexington and Perryville.....	24.14	Oct. 31, 1936
McMinnville Branch between Rock Spur and Ravenscroft.....	12.50	Feb. 1, 1937
Total.....	124.87	

Each case of abandonment followed only after careful and exhaustive inquiry, as this Commission, having heard the evidence, knows. The reluctance to abandon, if anything, has been carried to an extreme and was followed as an expedient no longer to be reasonably avoided.

Abandonment, however viewed, is tragic. Its destruction of property values is widespread and touches the county, the municipality, the farm, the home owner, the individual, and not the railroad alone. It is a last desperate remedy in a case otherwise hopeless; yet it is a remedy the use of which must hereafter increase unless present conditions greatly change. Lines which may operate only at a loss are constant drains on other lines, coming at a time when there are no reserves from which to make good the deficits they create.

For the average branch there is small hope. If continued in operation it must be maintained at least to standards of safety, yet the potential use of this maintenance [fol. 465] can be had in small part only. Take the Centreville Branch of the N. C. & St. L. Railway. Here are sixty miles of roadway maintained for a train every other way three times a week—easily less than five percent of the potential track use. The value of that property to this Railway must be measured in terms of revenue earned by this one train. There is no other source. The same situation, in greater or less degree, obtains with every other branch. That this state of fact should fairly be considered for purpose of taxation seems indisputable.

V

Another item of constant retirement is equipment—freight and passenger cars, also locomotives. The number of such units owned by the N. C. & St. L. was, in the years shown:

	1928	1938
Locomotives	265	194
Freight cars	8,490	6,471
Passenger cars	229	154

VI

As has been said, the unprofitableness of branch line operation to this Railway is in large measure due to its paralleling by all-year, all-weather highways, not only in our immediate territory, but generally throughout the State. Traffic, freight and passenger, once handled by rail, has gradually gone to motor carriers operating over these roads which are publicly paid for and publicly maintained.

An indication of the seriousness of this competition is seen in a comparison of the number of open stations,—that is, [fol. 466] stations with resident agents affording the public full freight and passenger station facilities, at N. C. & St. L. branch-line points, 1928 compared with 1938:

	1928	1938
Elora-Gadsden Branch	13	9
Centreville Branch	8	2
Decherd-Columbia Branch	16	3
McMinnville Branch	15	3
Tracy City Branch	5	2
Pikeville Branch	13	6
Total	70	27, or 43 agencies (branch line) closed.

Further emphasizing this condition, it is a fact that while at one time the N. C. & St. L. Railway had 231 agency stations, main line and branch, there are now only 86,—which means that 145 stations, (62.7 per cent of the total) have been closed, with empty station buildings being gradually destroyed by time and weather, monuments to what has taken place.

VII

This one statement leaves little to be imagined as to what has happened to the freight business of the N. C. & St. L.—branch and main line—yet a few illustrations may emphasize the effect of motor transport on the volume of traffic, the rates, the revenue and, consequently, the taxable value of this railroad:

In 1921, a depression year, the Nashville livestock market received 690,991 head of livestock, all sorts, with 484,243, or 69.79 per cent, coming in by rail. Sixteen years later, in 1937, also a year of depression, the total receipts had dropped to 380,597 head, of which 13,701, or 3.6 per cent, came by rail. The balance, 96.4 per cent, came by truck. [fol. 467] The total number of head received over a seven-teen year period, with percentages of rail and truck movements, is shown below:

Year	Total	Percent Rail	Percent Truck
1921	690,991	69.79	30.21
1922	784,566	64.61	35.39
1923	717,857	65.06	34.94
1924	528,294	61.95	38.05
1925	504,437	54.63	45.37
1926	479,741	49.06	50.94
1927	450,451	41.43	58.57
1928	475,995	28.00	72.00
1929	435,510	24.60	75.40
1930	385,552	21.24	78.76
1931	365,961	20.15	79.85
1932	348,052	15.30	84.70
1933	376,879	9.69	90.40
1934	357,533	8.90	91.10
1935	470,783	6.20	93.80
1936	423,059	4.70	95.30
1937	380,597	3.60	96.40

Livestock to Nashville is relatively short-haul traffic. Much more than half comes from distances less than one hundred miles. The effect of motor truck competition, however, is not limited to short hauls either to Nashville or elsewhere. For example, the bulk of all stock from Tennessee to the important market of Atlanta is now handled over the highways. As to Nashville, local livestock has reached the vanishing point so far as rail transport is concerned.

Another notable example of the diversion of freight traffic to the highways is that of fertilizer from factories at West Nashville. A comparison of the spring seasons of 1938 and 1935 is shown below:

[fol. 468]	Rail		Truck		Total
	Tons	Percent	Tons	Percent	
1935	59,572	76	18,615	24	78,187
1938	44,128	54	37,582	46	81,710

With the building of improved highways, the rail lines began to lose a portion of this business. Each year the loss has increased and there is small prospect of recovery. Fertilizer is used on farms largely interior from railroad stations,—usually it costs less to truck direct from factory to farm rather than pay freight to a railroad station and haul from that station.

Another instance is citrus fruits from Florida, a movement of high importance to this Railway. According to Federal and State authorities, trucks from Florida handled to points in the states shown, for the period September 1, 1937, to and including May 31, 1938, the following:

State	Boxes	# Cars
Alabama	290,962	727
Georgia	963,532	2,409
Kentucky	20,216	50
Tennessee	168,393	420

= Figured 400 boxes per car.

(Authority—Federal State Market News Service Release No. 8, June 6, 1938).

The N. C. & St. L. Railway operates in the four states named, and could have participated in the handling of a large percentage of this tonnage.

Later reference will be made to losses of other and important traffic, nor are they confined to relatively valuable and high-rated commodities, e. g.; there is a substantial movement of coal by trucks to Chattanooga, Richard City, [fol. 469] Ladds and other points at which manufacturing concerns are located, together with substantial quantities, steam and domestic, to other stations.

A survey made at Chattanooga in 1936 covered a total of 82 firms. It shows that inbound coal from various mines was handled as follows:

	Tons
By trucks	96,270
By N. C. & St. L. Rwy.	73,700
By other Railroads	213,200
Total	383,170

A heavy coal tonnage is annually trucked to other Tennessee and Alabama towns located on the N. C. & St. L. Railway. While the list below is not complete, it is representative, and the quantities shown are closely approximated:

	Annual tonnage by trucks
Alabama City, Ala.	2,400
Attalla, Ala.	3,000
Gadsden, Ala.	29,000
Albertville, Ala.	2,400
Bell Buckle, Tenn.	950
Boaz, Ala.	1,700
Bridgeport, Ala.	3,400
Cowan, Tenn.	3,500
Decherd, Tenn.	1,400
Dunlap, Tenn.	2,000
Guntersville, Ala.	1,250
Lewisburg, Tenn.	400
Columbia, Tenn.	500
Fayetteville, Tenn.	3,000
McMinnville, Tenn.	9,500
Manchester, Tenn.	2,000
Murfreesboro, Tenn.	12,500
Petersburg, Tenn.	270
Pikeville, Tenn.	6,000
Richard City, Tenn.	19,400
Sewanee, Tenn.	2,300
Shelbyville, Tenn.	12,500
[fol. 470] Smyrna, Tenn.	300
South Pittsburg, Tenn.	4,400
Sparta, Tenn.	3,800
Stevenson, Ala.	3,350
Tracy City, Tenn.	3,200
Tullahoma, Tenn.	5,000
Winchester, Tenn.	2,150

The movement of coal by truck would have grown even beyond its present proportion, except for the action of this Company in reducing many of its rates to meet highway competition. These and like reductions on road aggregates, sand, gravel, stone and other articles ranging in amount up to as much as thirty and forty per cent of normal tariff rates for comparatively short distances, are striking illustrations of the effect of new conditions on the earning power of the N. C. & St. L., in the form of charges forced to a barely out-of-pocket cost level on much of the traffic it retains.

VIII

This phase of the subject has peculiar interest in connection with railroad valuation for purposes of taxation. Railroads are true taxpayers. That is, the sums they pay in the form of taxes are not devoted by government to building and maintaining railroad tracks and terminals for free general use. They go to such public purposes as schools, roads, institutions, the courts, police protection, the general operations of government. On the other hand, so-called "taxes" paid by public motor carriers are, almost in their entirety, partial payments toward the cost of building and [fol. 471] maintaining public highways, the "tracks" they use with substantially nothing for the support of schools, courts, institutions, or even the upkeep of city streets, their true "terminals". Moreover, it is the considered opinion of those who have studied the question with open minds, that the total contribution of motor carriers to the cost of highways is less than the added cost burden their existence and operation impose on the private motorist and general taxpayer, in the form of roads of otherwise excessive strength.

In connection with the tax payments of this Company, it is interesting to recall that while these formerly allocated to highway support went to create and maintain facilities that brought traffic to this Railway, in largest part they now go to support direct competition with it by those who use the roads these railway taxes help to build. Further, that the total of taxes so allocated is greatly increased because of the added road strength this use demands and gets.

What is paid in Tennessee in the form of property taxes by the several modes of transportation is shown below,—the figures are for 1937, and are actual, as follows:

By Railroads	\$2,231,953.56
By Buses and trucks	15,679.04
By Boats and barges	1,071.74
By Airplane Lines	447.70

In the twenty-eight counties served immediately by the N. C. & St. L., the payments were:

[fol. 472]

County	All property taxes		School taxes	
	Railroads	Buses & trucks	Railroads	Buses & trucks
Bedford	\$11,167.70	.00	\$5,201.37	.00
Carroll	43,981.66	190.99	18,462.42	68.55
Cheatham	5,416.81	20.54	2,477.70	9.51
Coffee	8,250.62	.00	4,636.13	.00
Davidson	102,388.03	1,787.16	37,854.81	527.33
Dickson	14,676.76	69.23	7,474.23	37.38
Fayette	14,057.11	97.74	5,085.92	35.56
Franklin	24,332.90	102.48	14,955.77	62.96
Grundy	5,459.25	59.38	3,592.19	39.07
Hamilton	208,015.48	443.61	67,786.64	182.21
Hardeman	3,573.37	108.41	889.18	50.84
Henderson	14,350.89	85.63	6,046.86	36.22
Henry	39,623.62	95.12	20,737.69	45.96
Hickman	3,288.08	108.15	1,514.16	50.17
Humphreys	12,302.47	63.11	6,896.46	35.67
Lewis	5,545.97	.00	3,065.62	.00
Lincoln	8,847.46	73.72	5,151.55	42.79
Madison	52,918.71	356.96	22,827.78	152.45
Marion	15,381.39	342.58	9,037.86	202.58
Marshall	32,596.46	47.95	17,595.36	27.09
Mauzy	33,629.15	257.91	17,363.14	135.36
Obion	53,278.30	422.65	23,230.83	112.76
Rutherford	21,921.19	220.32	12,445.61	116.98
Sequatchie	1,631.92	.00	972.96	.00
Shelby	304,290.44	1,244.99	113,767.22	466.37
Warren	3,333.65	119.79	1,884.04	75.96
Weakley	30,366.58	86.48	13,530.88	33.28
White	4,174.01	162.09	2,369.36	94.50
Total	\$1,079,399.98	\$6,566.89	\$446,653.74	\$2,641.62

(In the above figures for the State, and in part for some of the counties named, \$395,777.00 delinquent by one railroad, not the N. C. & St. L., is not included.)

From a railroad point of view, it is an unfortunate fact that the shipper or traveler using railroad service must in the rate he pays, meet not only all the costs, operating and capital, of providing that service, but also the taxes assessed and collected against the plant employed, a state of fact not repeated where use is made of highway or air. The additional sum necessary to pay these railroad taxes is some [fol. 473] six or more per cent of the gross.

If the user elects to employ motor carrier service, the fixed plant is provided and maintained at public expense. For its use, the truck operator pays what he calls "taxes",

that is, a gasoline tax, registration or license tax, inspection fee, and a trifling ad valorem tax, if the last cannot be escaped, as usually it is. In his reports to the State of Tennessee, we are informed, it is even customary to include as "taxes" bridge tolls paid the State.

It must be admitted that the total of all the taxes so paid by trucks and truckers is not sufficient to cover the cost of constructing and maintaining our highways and bridges, if, indeed, it covers the cost of the added strength this use requires. It is plainly demonstrated, therefore, that motor carriers contribute nothing to the support of government in general. In other words, the situation sums up in this fashion—not one dollar of railroad taxes goes to build or maintain the facilities they use, while more than every dollar of so-called "truck taxes" goes to build and maintain the roads and streets over which they operate, with nothing left for other public purpose. The subsidy involved at once becomes apparent and its gross injustice seen.

The highways of Tennessee comprise a total of 69,637 miles of local and state roads. Of this 7,446 miles are designated as the "State Highway System", and are highly improved [fol. 474] proved all-weather roads. Since 1917 approximately \$245,000,000 has been spent in the construction and maintenance of these highways, of which \$52,000,000 was Federal money. The present expenditure is approximately \$10,000,000 annually.

In 1928 the system of all-weather roads comprised a mileage of 6,534. In ten years it has increased 912 miles, or 14 per cent.

In 1928 the total motor registration in Tennessee was 322,137 vehicles, of which 27,832 represented all types of freight trucks. In 1937 it was 400,384, of which 58,736 were trucks, classified as follows:

Commercial	46,189
Farm	12,547
Total	58,736

As will be seen, the increase in the number of trucks is 30,904 units, or 111 per cent.

That the carriage of freight by motor vehicle has grown amazingly during this period, with this growth greatly in excess of the percentage of increase in total highway mileage, is a fact of common knowledge.

The State Highway System of Tennessee, some 7,446 miles of all-weather roads, represents an investment of approximately \$180,000,000 plus an annual maintenance cost of more than two million dollars.

This splendid system, originally intended to provide ways for the individual passage of our people from place to place, [fol. 475] on their own occasions, has developed into a facility used by great organizations of public carriage by motor for hire, not only from place to place in this State, but interstate as well.

While all must admit that these highways were not built for the use and benefit of commercial truck operators, no well informed person denies they are so used, without adequate compensation to the taxpayers who own them, and that this use shortens the life of the highway and endangers the safety of travelers. Further, that there is diverted to highway carriage huge amounts of freight traffic which would move by railroad should these trucks, while continuing to contribute nothing to the general cost of government, charge no more than enough to pay a fair proportion of the cost of maintaining the roadways they use, a cost the railroads must meet without subsidy in the case of the facilities they use.

IX

Whatever the effect the development of the present road system may have had on the value of property in general (a question open to sharp debate), clearly it now operates to decrease the revenue and taxable value of the property of the N. C. & St. L. Railway.

This is said with full consideration given the traffic handled by this railroad originating by reason of highway construction, together with that of gasoline, automobiles, etc. Admittedly these are important, but they do not approximate [fol. 476] mate the otherwise normal growth of rail traffic had highways been restricted to their original purpose of individual and private use.

Omitting all consideration of the overwhelming loss of passenger business, to be discussed hereafter, and considering freight only, we find this state of fact:

In the depression year 1921 this railroad handled 5,277,759 tons of revenue freight. From past records of growth it could at the time, with confidence, have been predicted this would approximately double in fifteen years. Fifteen years

later, in 1936, had the former trend continued, we would have handled more than ten million tons. Actually we handled 5,145,727, or less than in 1921. The increase in 1937 was small, and based on the first six months of 1938 an improvement in 1938 is doubtful.

In order to amplify this tonnage reference, there is set out below a table giving the revenue tons handled by the N. C. & St. L. Railway, 1929 to 1937 inclusive:

Year	Tons handled
1929	8,187,007
1930	7,370,044
1931	5,278,168
1932	3,903,180
1933	4,325,272
1934	4,493,650
1935	4,234,381
1936	5,145,727
1937	5,296,706

New forms of transport do not mean that the total cost of moving goods from place to place is reduced. The result has been merely the shifting of a large part of that cost from the [fol. 477] owner of the goods to the taxpayer.

A railroad is a machine for handling mass transportation, which it does with efficiency and at low cost. Freight, loaded at thousands of industrial sidings, public team tracks, freight depots, is switched into train yards. The cars are there made up into trains which move with a minimum of man and mechanical power to proper terminals, where the switching is reversed and distribution made for unloading at thousands of sidings, team tracks and depots. This method is cheap if sufficient volume offers. A freight train, moving a thousand or five thousand tons, is an efficient transportation machine—a freight train moving a few packages of freight, a wasteful one.

The process described, obviously, requires a heavy investment in main and terminal track and other fixed facilities. These must be maintained at great cost, and upon them true taxes paid, going not to their building and upkeep but to the general support of government.

An immense railroad cost goes on whether one train, or many, or none, is operated, and whether these trains are empty or loaded with freight. This cost comes from fixed investment, upkeep, taxes. It is wholly out of proportion

when applied against a small volume of business, yet necessary of railroads are to handle the mass production the country requires.

The same character of cost actually exists in connection with motor transport. Roads—"main tracks"—must be built and maintained; streets—"terminal tracks"—must be [fol. 478] provided and kept up, but the charges they entail are met by the general taxpaying or motoring public. Moreover, taxes are not paid upon them; in fact, as has been shown, practically no true taxes are paid upon the value of the motor vehicles which use them as a place of business.

The terminal cost to the highway vehicle, or at least that part representing "terminal tracks"—city streets—is practically nothing, it is shouldered by the public; handling costs on and off the vehicle are small, while the cost of the highway, or "main track" movement varies almost directly with miles run. It results, then, that while there is a variation as between a lightly and fully loaded truck in the ton-mile cost of moving freight, after the point of a full truckload there is little additional cost reduction through increase in the number of trucks operated.

On the other hand, while it costs the railroad about as much to move a lightly loaded as a full car, the reduction in cost is rapid as the number of cars increases. To move a train of ten cars costs about as much as a train of fifty—while fixed costs and overhead, in large part, go on whether the one or the other, or neither, is handled.

Much of the essential transportation given by railroads consists of heavy, bulky, cheap commodities, moved over long distances, requiring a low rate per ton per mile. That the railroads may perform this task, and while doing so earn enough to pay taxes and continue solvent, it is necessary [fol. 479] other articles, by reason of their value and character, pay higher than average rates. And such have always been charged.

Highway competition is felt mostly in this higher-rated traffic range, and much of this, for distances long and short, has gone to trucks. There is also a considerable truck movement of heavy and cheap commodities for short distances, especially where a saving in terminal handling can be made. The trucking of coal from mines direct to the home, thereby saving the local truck haul from the coal yard to residence, is a case in point.

Trucks in the nature of the case cannot do the whole work

of transportation. They must confine their operations to special classes of traffic and special situations where a rate per ton mile higher than the average rail rate can be collected, leaving lower rated materials, on the average, to be handled by rail. By the selective nature of their subsidized competition, trucks not only reduce the volume of rail traffic, they, in greater proportion, reduce its revenue value and so reduce the earning power and taxable value of this and other railroads.

X

In Tennessee the major movements of freight traffic are to, from and between the principal cities. Of these, the N. C. & St. L. Railway, with its main line, connects Memphis, Jackson, Nashville and Chattanooga, and is also an essential part of important rail routes between East, Middle and West Tennessee generally. This through railroad stem is paralleled by first class State Highways, used by heavy commercial vehicles, frequently with more than one alternate route; in most cases, with highway mileage less than rail.

Many important smaller cities and towns are not on this main through railroad stem, but connect with it by branch lines. It is an important fact in the impairment of the earning power of this property that many of these branch lines run at right angles to the direction of the major flow of freight and passenger traffic, while the highway distances are direct and, therefore, shorter.

For example, between Nashville and the following Middle Tennessee towns, the comparative rail and highway distances are:

Between Nashville and	Rail distance	Highway distance
Sparta	130	91
McMinnville	103	73
Manchester	81	64
Tracy City	107	93
Centerville	70	53

Between Chattanooga and like points the disparity is greater.

This difference in the pattern of rail and highway lines on the map of Tennessee, added to other factors, has re-

sulted in a complete change in the character of road use, all to the detriment of the taxable value of this railroad. "Good Roads", once looked upon as a cheap and convenient means of getting products to or from the nearest railroad station, are now, in their use, distinctly competitive with railroads.

This statement of the loss of rail freight traffic because of highway competition created and fostered by the State. [fol. 481] may be summed up by saying that while it is not always possible to show exact figures, these given indicate it is distressingly great, and it continues to grow worse.

XI

"Distributive traffic", by which is meant the movement of L. C. L. freight from jobbing points to surrounding territories, has practically disappeared. How completely is shown by the following figures which give the tons of L. C. L. freight, both originated and delivered on its line, handled by the N. C. & St. L. Railway for the calendar years 1920-1937, inclusive:

Year	Tons	Percent of total tons handled	Year	Tons	Percent of total tons handled
1920	386,945	5.33	1929	122,173	1.49
1921	301,327	5.71	1930	94,031	1.28
1922	299,232	4.99	1931	62,185	1.18
1923	333,616	4.55	1932	37,606	.96
1924	324,087	4.67	1933	40,853	.94
1925	333,525	4.80	1934	39,412	.88
1926	339,407	4.62	1935	38,191	.90
1927	290,262	4.04	1936	36,091	.70
1928	134,461	1.70	1937	33,349	.63

This represents, for the most part, commodities sold by the merchants and jobbers of Nashville, Memphis, Chattanooga, etc., to retailers at stations on the N. C. & St. L. Railway and in adjacent territory. In the period shown the decrease was 91.4 per cent. This traffic now moves in commercial trucks or in the trucks of sellers and buyers. The business lost (91.4 per cent of the total) includes principally high-class commodities to which has now been added truck movements of heavy, bulky, low grade commodities,—the latter not usually for great distances (although at times [fol. 482] this is true) but in huge volume for short distance, with a constantly expanding trucking zone. The above statement is for all distances, but on goods of value, so-called "general merchandise", the loss to destinations

within, say, 100 miles greatly exceeds that shown. Nor does it appear this loss is recoverable by any system or method, rate or otherwise, now known.

XII

Inequality of regulation as applied to other forms of transportation also operates to reduce the use, the earning power, and the taxable value of this railroad.

Railroad regulation dates back fifty years. Designed for the purpose, it has served to correct certain abuses and unfair discrimination. Once it was possible for a large shipper, through the sheer size of his business, to bargain with public carriers, to beat down their charges, to secure secret rebates and other advantages. Rates could be, and were, changed overnight without publication. No business man knew his competitor's transportation costs. Moreover, it was possible for railroads to own or be financially interested in enterprises for which they carried, and this led to a long line of other discriminations. A half-century of regulation has made these abuses by railroads impossible. So far as railroad transportation is concerned, the business man now competes on the basis of his own production and selling costs, and each knows the railroad transportation costs of the other. Neither fears the other may secure a secret advantage through such means.

The coming of motor transport, not wholly regulated as [fol. 483] to interstate operations and not yet effectively regulated intrastate, puts the business world back into the age of changeable and secret transportation costs. The large shipper, because he is large, bargains with the interstate trucker for transportation; if the common or contract trucker fails to come to his terms, he secures his own equipment, puts it on the highway and transports his own freight. The small shipper, because he is small, has none of these advantages.

Again, the interstate contract truck operator is required neither to publish an open tariff nor observe stable rates; he may bid for business and, to secure an attractive movement, may change his charge, secretly and overnight. He is not required to maintain uniformity of treatment as between persons, places or commodities.

Railroads, regulated by law based on sound public policy, may do none of these things. Their rates are known and must be observed as published; they may be changed, except

where special permission is first given by public authority, only on thirty days' notice, and even, special permission being had, the process of its getting, plus the time necessary for publication, requires days. Railroads under the "commodities clause" of the Interstate Commerce Act may not haul the products of commercial enterprises in which they are financially interested. These and many other regulations apply to railroads, not to their competitors. Because of it these competitors have diverted a heavy business to the highways, moving it in the vehicles of common carrier, [fol. 484] contract trucker, shipper or consignee, in either case reducing the use and earnings of railroads and, consequently, their taxable value. Moreover, this trend of traffic diversion constantly and rapidly increases.

This is strictly true of interstate commerce, the bulk of all business in this country. On purely intrastate Tennessee movements effort has been made to regulate truck traffic by statutes which require certificates of public necessity and convenience, the posting of tariffs, etc. Such statutes do not seek effectively to regulate the business of the so-called "contract truck carrier", or that of the fleets of trucks carrying the freight of their owners. Even with the "common carrier", so-called, the problem of enforcement seems too much for the limited number of officials and officers. It must be conceded there is little effective policing of certified carriers. The tariffs they post are usually insufficient. In many cases they merely refer to tariffs compiled and published by railroads, at the latter's great expense, and adopt them as their own. Further, the observance of even the sketchy tariffs they post is, for the most part, perfunctory.

Perhaps these things are, in the circumstances prevailing, to be expected, yet the fact remains that unregulated, or slightly regulated, traffic by commercial motor vehicle has substantially lessened the use, the earning power, and the taxable value of this railroad; while, at the same time, it [fol. 485] has reintroduced into the commercial world old elements of uncertainty and guessing about transportation charges and costs.

In their efforts to meet this situation, railroads find themselves bound not only by provisions of law requiring stability and publicity of rates, but by the rigidity of the "long and short haul" clause of the Interstate Commerce Act. The attempt to remedy a local competitive situation by a

reduction in rail rates made to meet the bid of an unregulated trucker may affect a whole system of rates, covering not only this but other railroads, with the results spread over hundred-of miles, or an entire territory. Such changes may be wholly unnecessary for any other reason than the local competition sought to be met and otherwise improper. To make them, too, requires time for the preparation and filing of petitions to the Interstate Commerce Commission, time for the Commission to consider and act, time for publication and notice of the new rates, and there is also the question of expense in compiling and publishing. In such circumstances frequently it is decided simply to let the business go, although so far as the local situation is concerned it could be taken as added traffic and handled at some profit over and above the out-of-pocket cost.

The fact that Federal and State agencies prove themselves able to regulate railroads, while so far unable to effectively regulate competing carriers by motor, has seriously impaired the earning power of railroads in Tennessee, of the N. C. & St. L. in particular, and this affects the value of the N. C. & St. L.'s properties in Tennessee for ad valorem tax purposes.

[fol. 486]

XIII

Railroad traffic, and therefore railroad taxable value, has also been lessened by the competition of government through the creation, at public expense, of artificial and semi-artificial inland waterways, with their use by government-owned and government-operated barge carriers.

These waterway channels are provided by the taxpayer, including railroads; are maintained from the same source; are open to the use of any person, firm or corporation in the United States, except a railroad company, without payment of tolls of any sort, or in any amount: are served, in many instances, by public-built and financed terminals open to the use of water carriers at small or no cost. Consequently they are the agencies of a peculiarly destructive form of competition with railroads.

These matters are mentioned here not so much because of the essential unfairness involved, but as descriptive of another competitive factor that affects and decreases the earning power of railroad properties. It is obvious the citizen cannot compete with the sovereign; that a railroad company, bound, burdened and regulated, cannot compete with

the government which takes tax money from it to finance a competition which it freely allows to do things which, if done by the railroad, would be in violation of law.

Unfortunately for railroads, for their owners and for those who earn their living by working for them, apparently it is the fixed policy of the United States Government [fol. 487] to enlarge, extend and intensify this form of competition.

The Nashville, Chattanooga & St. Louis Railway meets water competition on the Mississippi River with two of its lines; on the Ohio River where the United States has spent vast sums to create a year-round navigable channel of nine feet, and on the Cumberland and Tennessee Rivers.

The Cumberland River is improved with a year-round six foot minimum channel from its mouth to Granyille, Tenn., above Nashville, a total of some 332 miles. This improvement cost the taxpayers, including this Railway, \$9,490,742, plus an accumulated maintenance up to June 30, 1937, of \$3,874,773. The total is \$13,365,515, with nothing counted for interest on this huge unproductive investment.

Large as they are, these expenditures have failed to result in movements of commercial freight commensurate with the sums expended. The river tonnage below Nashville for the years 1927 to 1936 inclusive, as reported by the U. S. Chief of Engineers, was:

Year	Tons
1927	278,994
1928	245,685
1929	314,649
1930	429,792
1931	357,235
1932	306,903
1933	236,224
1934	364,048
1935	437,378
1936	707,198

The following table analyses the tonnage for 1936. It [fol. 488] shows that the character of the freight is limited to a few commodities, with more than half sand, gravel and stone, and one-third petroleum products:

	Tons
Gasoline, kerosene, oil	243,780
Forest products	28,723
Sand and gravel	333,223
Stone	67,220
Fluorspar	22,365
Miscellaneous	11,887
Total	707,198.

The sand and gravel moves for short distances, rarely more than a few miles to the nearest city. The three or four firms using the river for gasoline transport claim large savings in cost thereby. It is significant that their prices to the public on gasoline so handled have not been reduced by the fraction of a cent. In other words, the public furnishes, through taxation, the money necessary for river improvement, with the entire benefit going to a few commercial concerns of great wealth and resources.

While such a waterway development necessarily depreciates the taxable property of this railroad, it may sometime be said that this loss to a particular taxpayer is overcome if the benefit is general, and if, in fact, waterway movements actually represent lower total costs of transportation. They do not. Simple mathematics show that the interest on the investment, plus maintenance, is largely more than would be required to pay the total cost of rail transportation on every competitive pound. On the other [fol. 489] hand, the acquiescence of the taxpayer in taking on excess costs of water transportation has created, and intensified, a competitive situation that has lessened the taxable value of the property of this Railway, and will decrease it further.

XIV

It is—from a railroad viewpoint—a curious and melancholy fact, that the only form of transportation seemingly expected to pay its own costs, and taxes in addition, is that by rail. So firmly established is the principle of providing free facilities for the use and benefit of other vehicles that there is no suggestion the newest form of transport—air—shall pay its way.

It is true that this Railway has for some years been called upon to meet this new form of competition, which

rapidly increases. In April 1937, the twenty scheduled airlines operating in the Continental United States carried 76,199 passengers and flew 33,136,248 passenger miles. In April 1938 the seventeen scheduled air lines then operating carried 104,661 passengers and flew 44,412,815 passenger miles,—according to reports to the United States Bureau of Air Commerce.

As is well known, air routes for the carriage both of passengers and express parallel the lines of this Company not only between the West, the Southeast and Florida, but likewise between Memphis-Nashville, Memphis-Chattanooga [fol. 490] nooga, Nashville-Chattanooga, Nashville-Knoxville, Nashville-Atlanta. Further details of this service will be given later on in this affidavit.

The expense of actually flying an airplane is small part of the total cost of air transportation. Ground installations and auxiliary services are important and expensive. Almost the entire burden of the latter is borne by the United States Government and by municipalities. Most airports are built and maintained by adjacent cities,—a notable example is the Nashville Airport recently built at a public cost exceeding a million and a quarter dollars, with a large additional expenditure now proposed. The United States Department of Commerce provides intermediate landing fields or main air routes, and keeps them in readiness for use; installs and operates an elaborate system of beacon lights, radio direction signals, special weather services and the like; and, finally, subsidizes the operation directly by paying for the carriage of air mail several million dollars each year more than it receives in air mail postage, all of which enables air lines to carry passengers at rates far below the true and inclusive cost of the service they give.

Perhaps these expenditures may be justified by considerations of national defense or general policy, but the fact is unaltered that, again, by subsidized competition, public agencies decrease the use and the revenue of this and other railroads, and consequently their taxable value.

XV

In addition to what has already been said, a more detailed [fol. 491] description of this property, the traffic it handles, and the conditions under which it is handled, are needed if the purpose is to obtain a fair idea of the value of this

railway for purposes of taxation. This description should include brief references to:

- (a) Terrain.
- (b) The character of competition met.
- (c) Composition of traffic.
- (d) Its seasonal character.
- (e) The service required because of the character of traffic handled and competition met, with certain other features of car hire, equipment ownership, etc.

Terrain: The difficult character of the territory traversed by the N. C. & St. L., particularly in Tennessee, is well known. It has been recognized by the Interstate Commerce Commission in many cases, among them:

34	I. C. C.	696
35	"	88
37	"	602
58	"	697
61	"	331

Profitable and, therefore, successful modern railway practice calls for few exceptions to a maximum grade of one-half of one per cent against traffic; there are important roads having less. On the N. C. & St. L. one-half of one per cent can almost be counted level track. For example, on the Chattanooga Division, Nashville to Chattanooga (152 miles), the heart of the line, the maximum uncompensated grade is 2.62 per cent, which is the tangent equivalent of 2.86 per cent. In the first 25 miles from Nashville, south-bound, there are 9 grades exceeding one per cent, one exceeding 1¼, one 1½. Between Murfreesboro and Tullahoma 15 grades exceeding 1 per cent, 8 exceed 1¼, one 1½. The grade at Fosterville (1.2 to 1.48 per cent) is five miles long; the one at Normandy (.98 to 1.38) is also five miles. Between Cowan and Sherwood the line crosses Cumberland Mountain on grades running as high as 2.4 and 2.6 per cent for nearly five miles. South of Sherwood it crosses Raccoon Mountain on grades running from 1 to 1¼ per cent for seven miles.

On the Nashville Division, Nashville to Hickman, the grades are from .85 to 2.08 per cent. One grade, six miles

long, runs from $1\frac{1}{2}$ to 1.62 per cent. There is a continuous southbound grade of 20 miles running from .64 to 1.94 per cent.

On the Paducah-Memphis line the maximum is 1.27.		
The Orme Branch has a maximum grade of	2.4	per cent
“ Sequatchie Valley Branch	1.31	“
“ Decherd Branch to Columbia	2.42	“
“ Huntsville Branch	2.30	“
“ Shelbyville Branch	1.41	“
“ Centreville Branch	3.42	“

The Centreville Branch is 60.78 miles in length; it has only $3\frac{1}{2}$ miles of level track, with 183 grades, none less than 500 feet counted.

In giving these grades the figures shown are without compensation or curvature, the latter equalling 4/100 per cent for each degree. To illustrate—the maximum of 3.42 per cent on the Centreville Branch is, because of curvature, equal to 3.92 on tangent track.

Perhaps a graphic idea of the system's difficulties may be condensed in the statement that it operates over more than [fol. 493] 600 grades exceeding 1 per cent, and more than 100 exceeding 2 per cent, all west of Chattanooga, with no grade counted less than 500 feet long, while on the Atlanta Division, although no grade exceeds 1 per cent, there are 300 curves in 138 miles, with a total of more than ten thousand degrees—that is, more than thirty complete circles.

XVI

Character of competition: The N. C. & St. L. operates between Memphis, Hickman, Paducah, on the one hand; Nashville, Chattanooga, Gadsden, Atlanta, on the other. It serves, therefore, as a connecting link between the middle west and the southeast. Its junctions with other lines are in the several states:

Tennessee:

Campaign: N. & A. Rwy.

Columbia: L. & N. R. R.

Chattanooga: Southern, A. G. S., C. of Ga., T. A. & G. C. N. O. & T. P.

Gibbs: Illinois Central.

Jackson: I. C., M. & O., G. M. & N.

Lewisburg: L. & N. R. R.

Martin: Illinois Central.

McKenzie: L. & N. R. R.

Memphis: L. & N., St. L. S. F., C. R. I. & P., Southern,
M. & O., I. C., St. L. S. W., Y. & M. V., Missouri Pacific.

Nashville: L. & N., Tennessee Central.

Paris: L. & N. R. R.

Union City: M. & O. R. R.

Georgia:

Atlanta: A. B. & C., A. & W. P., C. of Ga., Ga. R. R., L. &
N., S. A. L., Southern.

Cartersville: L & N., S. A. L.

Dalton: Southern Ry.

Marietta: L. & N. R. R.

Rome: C. of Ga., Southern Ry.

Kentucky:

Hickman: I. C. R. R.

Paducah: I. C., G. M. & N., P. & I., C. B. & Q.

[fol. 494] Alabama:

Alabama City: L. & N., Southern Ry.

Attalla: L. & N., A. G. S.

Gadsden: L. & N., Southern, T. A. & G.

Huntsville: Southern Ry.

Stevenson: Southern Ry.

An analysis of the above junction points and lines shows conditions of intensive competition with the N. C. & St. L., not, it is believed, repeated with any other road—certainly in the south, if in the country. Usually any line of importance, has joint through routes between the sections it serves, in which all participant carriers are preferentially interested, and preferentially support by solicitation and service. This is not true with the N. C. & St. L. Note the following:

At Atlanta it connects with the Southern Ry., Central of Georgia, S. A. L., Georgia-A. & W. P., A. B. & C. All, without exception, have hauls via junctions other than Atlanta paying greater revenue on traffic to and from the west. The Southern reaches Cincinnati, Louisville, Evansville, Memphis, Vicksburg and New Orleans with its own rails. The Central of Georgia has its own line to Birmingham; it is also an affiliate of the Illinois Central. The S. A. L. has its own rails to Birmingham. The Georgia-A. & W. P.

are under common management and control, and extend to Montgomery, Ala. The A. B. & C. has its own rails to Birmingham.

At Chattanooga the N. C. & St. L. connects with the Southern Railway System, Central of Georgia, T. A. & G. The Southern is a competitor in every direction, while the Central of Georgia reaches Birmingham.

[fol. 495] The connections of the N. C. & St. L. at Memphis are the Missouri Pacific, Rock Island, Frisco, Cotton Belt, Illinois Central. The Illinois Central has its own line to Birmingham, and so has the Frisco. The long hauls of the Missouri Pacific and Cotton Belt from the southwest are generally through St. Louis.

At Martin traffic interchanged with the Illinois Central is in competition with that line's hauls via Birmingham or via Hopkinsville.

At Paducah connection is made with the Illinois Central and C. B. & Q. The Illinois Central has its own lines, as cited above. With the C. B. & Q. conditions are more favorable, yet that line has a substantial ownership interest in the G. M. & N. The tonnage through Paducah, however, is small compared with that handled through other junctions.

Nashville is the most important point on the N. C. & St. L. There it competes immediately with the L. & N. which has its own rails from and to Cincinnati, Louisville, Evansville, Memphis and New Orleans; also with the combined competition of the Southern-Tennessee Central via Harriman, or Tennessee Central-Illinois Central via Hopkinsville.

Summed up, it may be said that the only connecting lines whose greatest revenue interests are with the N. C. & St. L. are the T. A. & G. at Chattanooga, and the Nashville and Atlantic at Campaign.

XVII

Composition of Traffic: Divided into statistical groups, as required by the Interstate Commerce Commission, the [fol. 496] traffic of the N. C. & St. L., in percentages, compares with national averages as follows:

	National Average	N. C. & St. L. Railway
Products of Agriculture	9.0	16.8
“ “ Animals	1.7	3.0
“ “ Mines	56.5	29.8
“ “ Forests	5.5	10.1
Manufactures and Miscellaneous	25.6	35.0
L. C. L.	1.7	5.3
Total	100.0	100.0

As will be seen, with the N. C. & St. L. percentages of Products of Agriculture, Animals, Manufactures and Miscellaneous, also L. C. L., sharply exceed the national average. This is true also of Products of Forests.

The bulk of Agricultural Products handled by this Company consists of citrus fruits, fresh vegetables, melons, peaches, potatoes, with the greater part originating in Florida and Georgia,—much in refrigerator and ventilated cars.

The bulk of the movement of Manufactures and Miscellaneous is represented by manufactured commodities and general merchandise from the west to the southeast.

The bulk of Products of Animals consists of packing house products and fresh meats, moving in refrigerator cars.

This traffic, much is perishable, demands, if had at all, that competitive schedules and competitive service be performed despite the physical handicaps described, or the cost they involve. The result may be illustrated like this:

Between Memphis, Martin, Paducah, Nashville, Chattanooga and Atlanta, in addition to all other services, the [fol. 497] N. C. & St. L. operates six through trains daily (four on the Memphis Division) with average speeds up to 30 miles per hour, a thing possible only by an extraordinary reduction in the train tonnage which could be handled except for the required speed. On these schedules the train maximums are from 1550 to 2200 gross tons, although the engines, if used on maximum grades of one-half percent, could easily handle more than double and at the same speed, or fifty percent more over the present grades if speeds could be reduced. On the Burlington from Duluth, Minn., to Paducah, Ky., with its maximum of three tenths of one

percent (15.3 feet per mile), the same engine could pull 6,000 tons.

These conditions of competition further require schedule maintenance substantially as certain as with passenger trains. The trains must move, as scheduled, whatever tonnage offers at the time. They cannot be held if this is less than the prescribed maximum, nor is this always available. So it is that the actual tons handled in a representative period are found to be 14.83 percent less than potential tons. On purely local trains, due to the enormous decrease in local traffic, the potential is easily fifty percent more than actual, yet these local trains must run if the public is adequately served.

Of its traffic, the N. C. & St. L. originates 51 percent, while 49 percent comes from connecting lines. Of the 51 percent it originates, 51.1 percent (26 percent of the total) goes to connections and 48.9 terminates on the road. Of the [fol. 498] 49 percent received from connections, 60.2 percent (29.5 percent of the total) terminates on the line and 39.8 goes to connections. Of all business handled, 20 percent is overhead, that is, neither originates nor ends on the line. Of the traffic originating on other lines going to N. C. & St. L. points, and of traffic originating on the N. C. & St. L. going to destinations on other roads, a largely preponderant percentage is handled in competition with other roads and routes.

XVIII.

Seasonal Nature of N. C. & St. L. Traffic: If the traffic of the N. C. & St. L. ran substantially the same from month to month, and the same in both directions, the cost of handling would be far less. Much is highly seasonal. For example, within about two months it annually moves between 2,000 and 3,000 cars of watermelons. In a period of three to four weeks it will handle 500 to 1,000 cars of peaches. During another time of the year it will move 4,000 to 5,000 cars of citrus fruit and up to 8,000 cars of vegetables. The greater part of all this originates in Florida and Georgia, largely in refrigerator and ventilated cars.

In the last six months of 1937 this Company's gross ton miles southbound were 748,697,878, northbound 685,151,702. The difference is 14 percent; but in October 1937, while handling 138,821,703 gross ton miles southbound, the gross ton miles northbound were 117,025,533, and this difference

is 18.6 per cent. During this six months the minimum northbound was 101,949,928, southbound 115,099,896, southbound the maximum was 138,821,702.

[fol. 499] These differences are highly important. The facilities owned and used must be maintained for maximum traffic. If the lack of balance is directional, costs mount because the power and crews must return at once to the home terminal, and this is eventually true of the equipment (cars). The return of crews and power must be immediate, whether the business available is much, little or none at all. The lack of tonnage balance with the N. C. & St. L., both directional and seasonal, has direct bearing upon its value for purposes of taxation, for as operating costs increase in proportion to total tonnage handled, net earnings decrease.

The peculiarities of the traffic involve other substantial added costs, e. g., because of the number of refrigerator and ventilated cars used, none being owned by the N. C. & St. L. (together with mileage on tank and other special cars), the car hire payments of the N. C. & St. L. are excessive. This is shown by the fact that while N. C. & St. L. ownership of standard box cars is well abreast and generally in proportion to mileage exceeds that of other southern lines, in 1937 it paid out for foreign car hire \$254,919.70 over and above the amount collected for the use of its own cars.

Again, the class of traffic generally handled by the N. C. & St. L., and its highly competitive character, requires that an always excellent service shall be supported by intensive solicitation. The latter is expensive. For the latest 12 months of record the solicitation of the N. C. & St. L., in 12 [fol. 500] off-line and 7 on-line agencies, cost \$318,535.73, of which \$207,360.49 was off-line.

XIX

From the quite inadequate statement here made, it must be seen that the traffic of the N. C. & St. L. is procured only through intensive sustained effort. It has no such thing as a monopoly of traffic either at points common with other roads, or at stations usually described as "local". In point of fact there is no longer a "local station". Its whole business is competitive with some form of transportation,—rail, truck, air, with the certainty the purchaser will demand, as

he has the right to do, the best service at the lowest available cost to him.

It is impossible to study this freight and passenger traffic day after day, passing on the question whether or not this or that shall be surrendered to a subsidized competitor, or whether an attempt shall be made to meet the competition through sharp rate reductions; forced to consider if it is better to give up this or that particular movement to these competitors rather than risk the tearing down of widespread rate structures; knowing that whether it is elected to give up the traffic or reduce the rate, either decision reduces the revenue of this railroad; knowing, further, that as these revenues are reduced it is not possible for the most efficient operating department to cut expenses correspondingly—it is impossible, I say, to escape the conclusion [fol. 501] that the taxable value of this Railway has been seriously and permanently lowered because of the creation and maintenance of conditions with which our State and Federal Governments have surrounded us.

XX

In none of this has the passenger revenues of this Company been discussed in detail. It is a painful subject. In the depression year 1922, our passenger revenue was \$4,678,037.50. In the next year, 1923, more than \$5,000,000. In the boom year, 1929, it was down to \$2,909,440.13. Two years later, 1931, it was \$1,419,860.24; in 1932, for the first time in twenty-five years, less than one million dollars, viz: \$919,629.00, and there (below one million) it remained until 1936; when it rose to \$1,116,143.00. In 1937 it was \$1,207,133.00, but, unless conditions materially improve, in 1938 it will again dip below a million. The earnings for the first five months of 1938, which include the great bulk of Florida travel, were \$480,032.00. Further, this threatened decrease, 1938 compared with 1937, is despite heavy capital expenditures for improvements, with the taking on of additional annual charges for maintenance, depreciation and rentals. For air-conditioning of passenger equipment, the N. C. & St. L. has recently spent \$293,525.82, on which the annual depreciation is \$36,690.72, the annual maintenance and added operating cost \$16,327.40. In addition, rental payments are made to the Pullman Company covering air-conditioned [fol. 502] cars of their ownership amounting to \$30,253.00 annually. The annual total of these items is \$83,270.82.

In the effort to keep costs more nearly in line with revenue earned, our passenger train service has been reduced, although no train has been taken off unless it was first demonstrated that out-of-pocket costs of wages, fuel, etc., could not be earned. By no possible reduction in rates or service can the present revenue loss be met. This Company's investment in passenger equipment—stations, coaches, locomotives and the like—is substantially without value because the things it represents cannot be used to produce a net return, however small.

In a State like Tennessee, with a magnificent system of high-speed highways, traversing the shortest mileage between centers of population, there seems little field for local public passenger transportation, rail or highway. On our branch lines, where the competition of public highway carriers has forced the discontinuance of passenger train service, it is observed the substitutes have been practically driven out of business. There are miles of our track, paralleled by highways between considerable towns, with not enough demand for local public passenger transportation to support even a seven-passenger sedan-bus-line.

Traffic checks made by the State of Tennessee over a time of one year (October 1936-October 1937) show that [fol. 503] in an average twenty-four hour period 20,848 private passenger automobiles entered or left Nashville on eleven State Highways. This movement (it is correspondingly found everywhere) averaging 868 cars an hour with a driver in every car and additional passengers in most, demonstrates that railroads face not competition merely, but a revolution in travel habits.

It seems clear to the open-minded observer that modern conditions, operating through State agencies, have destroyed the taxpaying value of former rail passenger plants and replaced them with a non-taxpaying system of highways. This may be progress, and is not here the subject of complaint, except as it affects the value of this railroad for taxpaying purposes. As to that, to realize what has taken place one need only see our deserted stations, more than half closed; ride our trains of a few nearly empty coaches, and look about him at the travel on the highways. These conditions are not products of "depression" or "recession"—they represent changes in the habits and practices of a people which, surely and swiftly, are destroying

the usefulness of this Railway's present passenger plant, and have nearly accomplished that result.

Its passenger facilities at Nashville are typical of the situation on this system. They were constructed, largely around 1898 and 1899, at a cost for passenger business only, well over a million dollars. They were built on the theory that the N. C. & St. L. would handle a business of several million passengers a year, Nashville getting its proportionate share. It is now true that these facilities are used [fols. 504-505] only to about ten per cent of capacity. And this or worse is true everywhere. Excellent depots in towns like Murfreesboro, Shelbyville, Fayetteville, McMinnville, Lexington, Jackson, and a score of others, are now used to about this per cent capacity, or less, in some cases not at all. To put a value on such structures for purposes of taxation comparable to the value of physical structures in other lines of business, which have not undergone such revolutionary change, is economically unsound.

XXI

Perhaps the final question is this:

"To what extent should the State impose taxes on properties the true value of which, through subsidization of rival properties, the Federal and State Governments have largely destroyed?"

I make this affidavit as evidence to support the protest filed by The Nashville, Chattanooga & St. Louis Railway with the Tennessee Railroad and Public Utilities Commission on August 31, 1938.

I am agreeable to cross-examination by the Commission, any member thereof, or by its counsel.

(Signed) Charles Nuhum, Vice-President and Traffic Manager.

Subscribed and sworn to before me this the 31st day of August, 1938. Earl Roach, Notary Public. My commission expires May 10, 1939. (Seal.)

[fol. 506]

VI

EXHIBIT No. 10 TO BILL OF EXCEPTIONS

The Nashville, Chattanooga & St. Louis Railway

Re Tennessee Assessment

1938-1939

AFFIDAVIT OF L. E. McKEAND

[fol. 507] STATE OF TENNESSEE,
County of Davidson, ss:

I, L. E. McKEAND, being duly sworn, state:

As Comptroller of The Nashville, Chattanooga & St. Louis Railway, I am the official head of the Accounting Department in charge of all receipts and disbursements and the proper recording of all transactions of a financial nature, as prescribed by rules and regulations of the Interstate Commerce Commission. It is also the responsibility of the Department to prepare statistics and cost studies of every nature pertaining to Operating and Traffic matters, including all such reports and statistics as required by the Interstate Commerce Commission and the various state commissions.

The Interstate Commerce Commission since 1907 has had full and complete authority to direct and supervise the accounting methods of railways; and, in order that uniformity shall be observed by all carriers, it issues a book of instructions and procedure, setting out in detail the rules to be followed for each individual item or transaction.

Briefly, these instructions may be classified under six general headings: Receipts, Disbursements, Income, Profit and Loss, Balance Sheet, Capital Expenditures.

[fol. 508] No deviation from these published rules is permitted, except by direct authority from the Commission.

Once each year an "Annual Report" is furnished the Commission (under oath) which contains a complete and comprehensive analysis of every account on our books; and, in addition to this, the Commission maintains a corps of expert accountants who periodically visit the Railway's headquarters for the purpose of making an audit of its books and all underlying records. Such an audit was made of our accounts in 1931-1933 and again in 1936.

I am submitting (as part of my testimony, Exhibit No. 1, an accurate income account of operating results for the years 1931 to 1937, both inclusive, and the first six months of 1938. Attention is directed to the fact that the revenue items reported under the caption "Operating Revenues" represent money received from operations as a common carrier. The "Expenses" reported in the second block are those expenses applicable to the production of the foregoing revenue. From the net difference of these two blocks is deducted (Income Items) "Railway Tax Accruals" and "Uncollectible Railway Revenue." The other two income items deducted from or added to this net figure (depending whether debits or credits) are Joint Facility and Equipment Rents. [fol. 509] the final result being designated as "Net Railway Operating Income" and represents the gain or loss from actual rail operations.

In the next block we find certain items reported under the caption "Non-Operating Income." These items include, as a general proposition, rents received from owned properties not used in its carrier operations, dividends and income from Funded and Unfunded Securities, adding the total of this block to the "Net Railway Operating Income" we arrive at a figure designated as "Gross Income" representing the total income from all sources, both operating and non-operating properties.

Under the next caption "Deductions from Gross Income" there are included Rents for Leased Roads, Interest on Funded and Unfunded Debt, etc., the remaining balance representing the "Net Corporate Income" out of which the Corporation may provide dividends to its stockholders or use for other corporate requirements.

It is to be noted from this Exhibit there has been no Corporate income during the seven and one-half year period. [fol. 510] except for 1936, when we earned only \$51,999.00. The net loss, therefore, for seven and one-half years has been \$2,770,742.00.

Operating results, as reflected in the Income statement for the first six months of 1938 indicate that no real improvements for the entire year of 1938, as compared with the year 1937, may be expected. Net Railway Operating Income was one hundred thousand dollars less than for the corresponding period of 1937; carloadings and tonnage records for the month of July reflect a decrease of 14% under July 1937, and August reports have shown no im-

provement over July. From present indications it looks as though we will be fortunate if 1938 results are no worse than those of 1937.

At the close of the first six-month period of 1937, we showed a net corporate gain of \$48,019.26, yet at the close of the year we had sustained a net loss of \$471,623.00.

I am submitting as my Exhibit No. 2 operating and financial results for the past 22 years. During the year 1916 we produced total operating revenue in the amount of \$13,519,588.00 at an operating cost of \$9,749,810.00, or a ratio of expense to revenues of 72.12. Compensation to employees amounted to \$6,707,680.00 and Railway Tax Accruals \$343,843.00, (which included \$57,983.00 for Federal Income taxes). The net corporate income for the year was \$3,056,935.00, and the Tennessee properties of this Railway were assessed by this Commission at a valuation of \$15,219,520.00. The main track mileage, then operated was 1230.76 miles.

During the year 1937 we produced total operating revenue amounting to \$14,299,433.00, an increase over 1916 of \$779, [fol. 511] 845.00 or 5.7%, while the operating costs amounted to \$12,510,172.00, an increase over 1916 of 28.2%. The operating ratio was 87.49. Railway Tax Accruals amounted to \$877,158.00, and net corporate income showed a deficit of \$471,623.00. In other words, with an increase of only 5.7% in operating revenue the railway operating expenses increased 28.2%, and the operating ratio (which figure represents the operating cost of producing a dollar of revenue) increased from 72.12 to 87.49.

In 1916 our Railway Tax Accruals (excluding Federal Income Tax and Miscellaneous Tax Accruals of \$84,725.00) amounted to \$285,860.00. In 1937 they had increased to \$877,158.00 (excluding Federal Income Taxes) or 206%. Taxes paid on non-operating property added \$55,622.00, making a total tax burden for 1937 of \$932,780.00.

In 1916 the ratio of Railway Tax Accruals to total Operating Revenue was 2.54%; in 1937 this ratio had increased to 6.13%.

Compensation to employees had increased \$2,298,380.00, or 34.2%, while the number of employees had decreased from 9255 in 1916 to 5412 in 1937 or 3843 employees, equal to 41% reduction.

The ratio of employees' compensation in 1916 to operating revenue was 49.61, while in 1937 it was 62.98. In

other words, for every dollar of revenue collected we paid [fol. 512] 49.61 cents in wages, while in 1937 this had increased to 62.98. In addition to this, all material and supplies have increased, as any increased burden in taxes or expenses placed on industry is reflected in the cost of the manufactured product, which the consumer pays.

With respect to the relation of payroll expense to total operating revenues, The Nashville, Chattanooga & St. Louis Railway occupies a position much less favorable than the average of Class I railroads of the Nation. For the six year period, 1931-1936, inclusive, (1937 figures not yet available) the average payroll ratio to total operating revenues for all Class I roads was 47.24%; while for the same period the ratio for this Railway was 61.21%.

Unbalanced traffic, restricted loading of freight trains, due to heavy grades and fast schedules, excessive maintenance costs, both to roadway and equipment, made necessary account of extreme curvature and heavy grades, the operation of light tonnage producing branch lines, and other causes, combine to increase this payroll expense to The N. C. & St. L. Railway.

I here set out a table showing for the years 1931-1936 the total operating revenues and payrolls of all Class I railroads as reported to the Interstate Commerce Commission:

[fol. 513]	Year	Revenues	Payroll	Ratio
1931		\$4,188,343,244	\$2,094,994,379	50.0
1932		3,126,760,154	1,512,816,117	48.3
1933		3,095,403,904	1,403,840,833	45.3
1934		3,271,566,822	1,319,351,725	46.4
1935		3,451,929,411	1,643,878,510	47.6
1936		4,052,734,139	2,448,635,804	60.4

Comparison of this table with Exhibit No. 2 hereto reveals that if this Railway had been able to operate with the same payroll ratio as the average for the country, its operating expenses for 1937 would have been two and one quarter million dollars less than the sum actually expended.

The exhibit filed herein, verified by the affidavit of Dr. J. H. Parmelee, Director of the Bureau of Railway Economics of the Association of American Railroads, at pages 23 and 24, sets out operating averages of all Class I railroads in the United States with respect to the number of freight cars and tonnage handled per train mile and the speed and cost of handling. Similar averages for The N. C.

& St. L. Railway for the year 1937 reveal that only in the speed of freight train movement does this road compare favorably with the national average. The comparative table below demonstrates the high ratio of operating expenses to freight revenues on this property:

[fol. 514]

	N. C. & St. L. Railway	National Average
Freight car miles per train mile (excluding caboose).....	31.9	46.6
Net ton miles per train mile.....	444	796
Freight train miles per train mile.....	18.2	16.1
Gross ton miles per train hour (excluding locomotive and tender).....	22,001	30,349
Freight expense per 1000 revenue ton miles.....	\$9.61	\$6.41

Of course, it will be impossible for us to hold our operating expenses at anywhere near the present level for an extended period, as practically the entire reduction represents deferred maintenance that ultimately will have to be caught up. The prospect for an increase in traffic sufficient to cover these necessary expenditures and leave a surplus for dividends and improvements in the property, that should be made, is not encouraging at this time, nor do we think it will be for years to come. The cost of labor and taxes is out of all proportion to other operating costs and will have to be reduced before a balanced operation can be expected.

Where the term "Operating Ratio" has been used, it should be understood to represent the relation of all operating revenues to all operating expenses and is arrived at by dividing the expenses by the revenues.

I am submitting as my Exhibit No. 3 statement of classified service miles, showing those units for the system as a [fol. 515] whole; those allocated to Tennessee and outside of Tennessee; system main lines only and operating branches. In the next table of this same exhibit, those units are then allocated on basis of main track mileage.

It is evident from the figures submitted that the preponderance of our business is handled on the Main Line, that is, the track extending from Paducah, Memphis, Hickman to Atlanta. As compared with branches, reduced to a percentage basis, the results are as follow:

	First main track miles	Loco- motive miles	Car miles	Gross Ton miles	Train miles	Pas- senger miles
Main Line.....	62.0	91.8	95.3	95.6	92.2	98.8
Branches.....	38.0	8.2	4.7	4.4	7.8	1.2

Average per Track Mile
Actual

Main Line.....	689.94	7379	127,815	5,267,958	5495	95.37
Branches.....	421.92	1076	10,296	389,838	752	1.787

Note: The so-called West Nashville Branch (3.65 miles) is a part of the Nashville Terminal yards and produces no road-haul revenue. It is used only for switching movements and no traffic records are kept for it. It is, therefore, omitted from the tables in Exhibit No. 3. Mileage between Hickman and Martin and between Paducah and Bruceton, properly classified as branch lines in the affidavit of Charles Barham is here included as main line tracks.

While the Branch mileage is 38% of the total, it handled only 4.4% of gross ton miles and 1.2% of passenger miles. The density of tonnage per mile of branch line track, as shown by the foregoing, is only 7.4% of the main line track tonnage. For instance, a mile of Main Line handled 5,267,958 gross ton miles as compared with 389,838 gross ton miles on branches.

As for passenger miles, the Main Line handled 95,376 per track mile as compared with 1,787 on branches.

[fol. 516] The tables on Exhibit No. 3 demonstrate very clearly the disparity in average value per mile of the System mileage in Tennessee and in other states. The second and third lines of the second table show the per mile use made of the Tennessee mileage as compared with the mileage outside Tennessee, the average of the several units of traffic being for Tennessee mileage 88.4 percent of the average for mileage outside Tennessee. These two lines of the table are here repeated for emphasis:

Averages per Main Track Mile
Year 1937

	Loco- motive miles	Car miles	Gross ton miles	Total train miles	Passenger miles
System in Tennessee	4,882	80,401	3,296,691	3,578	56,185
System outside Tennessee	5,253	90,341	3,720,363	3,992	69,149
Ratio Tennessee mileage to mileage outside Tennessee	92.9%	88.9%	88.6%	89.6%	81.2%

The inclusion of train miles and locomotive miles in the foregoing computation results in a distortion unduly increasing the average for Tennessee. This results from the fact that 74.5 per cent of the system branch line mileage

lies in Tennessee. In figuring locomotive miles, the mileage of a small branch line locomotive is counted the same as that of a modern locomotive of many times the power on the main line tracks; and a two or three car branch line [fol. 517] train receives the same count as a main line train of forty or fifty cars. Obviously, therefore, to obtain the true picture of the use value of Tennessee mileage as compared with mileage outside Tennessee, the ratio should be based only upon car miles, ton miles and passenger miles; the average of which three ratios is for Tennessee 88 per cent of the average for the mileage outside Tennessee.

The figures used in this Exhibit are those compiled currently for our various reports, except that it became necessary to rework them in order to secure a separation between branches and main line. General statistics of this nature are compiled in accordance with I. C. C. regulations.

It is generally recognized that the capitalization of average net operating income at six per cent, for a period of years immediately preceding the date of assessment, is a fair test of the value of the property used to produce such income. The statutory mode of assessment in Tennessee requires that a considerable portion of the property used to produce such income, station buildings, shops and office buildings, etc., be assessed as localized property. It is also true that this Railway has income producing property, the income from which is not included in the net operating income. Accordingly, I have prepared and file herewith as Exhibit No. 4 a statement of net operating income for a [fol. 518] period of seven years, 1931-1937, inclusive, adjusted to include all other net income of the Railway. In this Exhibit are included all items of net income except interest on securities and bonds, not subject to ad valorem taxation in Tennessee. The fifth column "Miscellaneous non-operating physical property income account" includes gross rents from non-operating property, and the sixth column states the taxes paid on the property producing such gross income. Since taxes on operating property are included in deductions from gross revenue to produce net operating income, it is obvious that only the net rental income from non-operating property, after payment of taxes, should be included. To the seven-year average of net operating income is added the income from lease of road, miscellaneous rent income and the net income from non-operating property so that the table shows the total seven-year average income from all

sources (except interest bearing securities) available for fixed charges and dividends, to be \$961,277.88. Capitalization of this figure at six per cent gives \$16,021,298 as the value of all corporate property, both leased and owned, subject to ad valorem taxation in the four states in which the road operates. To obtain the value of the distributable property of the corporation the value of the localized property, both in and outside Tennessee, must, of course, be deducted from the figure reached by capitalization of income. [fol. 519] and the balance will be the sum representing the value of the roadbed and rolling stock of the system to be allocated among the four states. The Commission, in its tentative assessment, having found the value of the localized property of the system to be \$5,974,471, the value of the system distributable property on that basis would be \$10,046,827.

74.5 per cent of the main track branch mileage of the System lies in Tennessee. (314.59 miles in Tennessee; 107.33 miles in other states). This large percentage of the system branch mileage in Tennessee and the table of traffic units, Exhibit No. 3 hereto, clearly demonstrate the greater per mile value of the system distributable property outside Tennessee as compared with the per mile value in Tennessee, and obviously the allocation of distributable property to Tennessee on the sole basis of track mileage would import into Tennessee for taxation values which do not exist therein.

I file herewith as Exhibit No. 5 to this affidavit a table showing the reproduction cost, new, of the physical property of the Railway, other than equipment, including leased properties, made by the Interstate Commerce Commission as of June 30, 1916, brought to December 31, 1937, by taking into account additions and betterments, and retirements, in accord with rules approved by the Commission for reporting property changes. The assignment of values to Tennessee, including all lands, buildings, and property other than equipment, used for carrier purposes, was made by the Commission for property in existence at the valuation date. [fol. 520] and principles and valuations followed with respect to subsequent additions and betterments and retirements have been inspected and approved by the Bureau of Valuation of the Interstate Commerce Commission. While the valuations made by the Commission, adjusted to date as indicated, do not represent present values for purposes of

taxation, for reasons fully considered elsewhere, the allocations to Tennessee of 64.11 per cent of the system value, on the basis of actual inventories as made or approved by the Interstate Commerce Commission constitutes a fair measure of the relative value of that part of the Railway's property in Tennessee, other than equipment, to the system as a whole.

Equipment is not included in this exhibit for the reason that the Interstate Commerce Commission made no attempt to allocate equipment values among the states in which the Railway operates.

Affiant here directs attention to an obviously erroneous reference by the Railroad and Public Utilities Commission, in its tentative assessment issued August 22, 1938, to the valuation made by the Interstate Commerce Commission of the properties used by The N. C. & St. L. Railway for carrier purposes, as of June 30, 1916. The Tennessee Commission states the final valuation to have been \$69,262,132.00, and adds to that figure the value of the equipment now used or owned by the Railway. Reference to the Report and Order of the Interstate Commerce Commission in valuation docket No. 367 (31 I. C. C. Valuation Reports, p. 567) shows [fol. 521] that the Commission found the total value "for rate making purposes" of properties employed by the Railway for carrier purposes to have been \$69,845,395.00, which included not only the value of equipment inventoried by the Interstate Commerce Commission at a depreciated value of \$8,700,000.00 but also \$1,500,000.00 of working capital.

The report of the Interstate Commerce Commission above referred to contains an inventory, as of June 30, 1916, of all property used by the Railway for carrier purposes, and while the total value fixed for rate making purposes exceeds by about two million dollars the aggregate of inventoried items valued at reproduction cost less depreciation, the report states that the rate making value fixed included "appreciation, depreciation, going concern value, working capital, and all other matters which appear to have a bearing upon the values here reported." (31 I. C. C. Valuation Reports 393). Obviously no satisfactory or significant result could be obtained by adding to the depreciated rate making value of June 30, 1916, the cost price without depreciation of additions and betterments added since that date, less retirements, as the Commission has done in the assessment of August 22.

The sum of \$11,840,601.00 stated in the Commission's assessment of August 22, as the aggregate of additions and betterments to the N. C. & St. L. system properties since June 30, 1916, is taken from the tax return filed by the Railway. Due to a revision of records, ordered by the Bureau [fol. 522] of Valuation of the I. C. C., it was necessary to correct certain items, which corrections are not included in the tax return. The figure stated in the return and in the assessment should be made to read \$12,125,220.00, which is the correct amount as verified and approved by the Bureau of Valuation.

As illustrating the disparity between investment or reproduction costs and actual values, with respect to railroad property, I file herewith as Exhibit No. 6 to this affidavit an accounting statement of 127.72 miles of main track abandoned since 1928, all but 16.35 miles of which was in Tennessee, the amount salvaged being 32.8 per cent of the assessed value and only 14.0 per cent of the amount at which the abandoned mileage was carried in the Investment Account.

Charts and tables are being filed, along with this affidavit, to show to the Commission the present condition, particularly with respect to present earning power, of the Class I Railroads of the Nation. Reference to page 19 of the first set of tables and charts verified by the affidavit of Dr. J. H. Parmelee, Director of the Bureau of Railway Economics of the Association of American Railroads, discloses that, for the entire industry (Class I Roads) the ratio of fixed charges, rent on leased tracks and interest on borrowed money, to operating revenue was, for 1937, 15.4 per cent, and for the eight-year average, 1930-1937, the period of low [fol. 523] revenues, 17.3 per cent. I file herewith as Exhibit No. 7 to this affidavit a table showing that this ratio for The Nashville, Chattanooga & St. Louis Railway was for 1937 only 10.5 per cent, and for the eight-year average only 10.8. As compared with the average railroad, therefore, the fixed charges of this property are most conservative.

The Lease Contract under which The Nashville, Chattanooga & St. Louis Railway now operates the Western & Atlantic Railroad is dated May 11, 1917, and expires December 27, 1969. By its terms The Nashville, Chattanooga & St. Louis Railway is obligated to pay to the State of Georgia \$45,000.00 per month and to expend an additional \$5,000.00 per month for additions and betterments on the line of the

W. & A., a total annual cost to The N. C. & St. L. Railway of \$600,000.00 per annum. In part consideration of such payments the lease provides that the properties of the W. & A. lying within the State of Georgia, including additions and betterments added during the term of the lease, shall "be exempt from the payment of any taxes, of whatsoever nature," and from any privilege, franchise or other taxes for the operation of said property. The State of Tennessee for 1936-1937 assessed that part of the W. & A. lying in Tennessee at the rate of \$37,000.00 per mile. A similar assessment by the State of Georgia on the 121.4 miles of the line in that State would have been \$4,391,800.00, or which the ad valorem tax at the average county rate in Tennessee for 1937 of \$2.22, plus the state tax of \$.08, [fol. 524] would have been \$132,632.00, to which municipal taxes would have to be added. It is, therefore, fair to consider that approximately \$150,000.00 of the annual rent payment to the State of Georgia should be treated as in lieu of taxes to Georgia and its subdivisions.

The Lease Contract under which The Nashville, Chattanooga & St. Louis Railway operates the line between Paducah and Memphis provides for payments, as rental, of all taxes assessed on the properties leased, and five per cent per annum on \$3,093,000.00, the original purchase price, plus sums expended by the owner for additions and betterments. The Lease is dated September 9, 1896, and expires December 14, 1994. The amount now paid as annual rental for that property, in addition to taxes, is \$206,132.00. Bonds issued by the Louisville & Nashville Railroad Company on the security of this property, outstanding in the sum of \$4,619,000.00, are general obligations of the Louisville & Nashville Railroad Company maturing in 1946. The bonds bear interest at the rate of 4% per annum; and, in addition, provide that the issuer will pay normal income tax on interest payments.

The tax return filed by The Nashville, Chattanooga & St. Louis Railway with the Commission states the value of the rolling stock of the Railway at \$7,618,128.91, as of December 31, 1937. The value so reported is the actual book value at which the property is carried on the books of the Corporation, less depreciation, accrued and applied at rates and by methods first submitted to, and approved by, the Interstate Commerce Commission. The similar property reported by the Railway to this Commission, as of De-

ember 31, 1928, was valued on the same basis at \$9,540,105.65, an excess over present value of \$1,921,976.74. The 1938 list includes 61 fewer engines than on December 31, 1928; 1,939 fewer freight train cars; and 65 fewer passenger train cars. In this report no adjustment whatever was made to reflect the destructive effect of eight years of business and economic depression on the actual or market value of all such equipment in 1938 as compared with 1928 values. The depreciation charged is based solely on estimates of the service life of the unit.

In the tax return filed with the Commission for the current assessments, at pages 18-21, income and expense items for the State of Tennessee, are set out for the year 1937: allocations and assignments of system income and expense items having been made in accordance with formula stated in the Railway's Circular No. 372-D (dated January 1, 1936) heretofore filed with the Commission. The return does not however state the net railway operating income. The figures given for railway operating income on page 18 (\$635,597.69) must be credited with income from rental of equipment and joint facilities, and charged with amounts payable for the same items, to reach the net railway operating income for Tennessee. The items to be added and deducted appear on page 21 of the Return, including the first [fol. 526] five lines of the answers to questions 15 and 16. These items are there erroneously classified as "non-operating" income and deductions, they being essentially operating income items and so classified and recognized by the Interstate Commerce Commission. The aggregate of these items for Tennessee are: Income \$705,724.44; deductions \$908,765.98, creating a debit balance chargeable to Tennessee operations of \$203,041.54. Deducting this sum from the item of \$635,597.69, reported on page 18 as railway operating income for Tennessee, leaves \$432,556.15 as the net railway operating income for Tennessee, which is 51.2 per cent of the net railway operating income for the system in 1937. Capitalized at 6% this Tennessee net railway operating income gives \$7,209,266.00 as a fair measure of the Railway's operating properties, including equipment in Tennessee for 1937.

I file herewith as Exhibit No. 8 to this affidavit a table showing the 1937 net railway operating income for the system, for mileage in Tennessee, and for that part of the system outside Tennessee, and showing the net railway

operating income per mile of main track in each of said three divisions. The table shows that the net railway operating income per mile of main track in Tennessee is only 87.84% of the per mile income for the system and only 41.84% of the per mile income of that part of the system outside Tennessee.

[fol. 527] The foregoing affidavit was prepared from records compiled under my direction in accord with rules and regulations of the Interstate Commerce Commission, and in my custody, as Comptroller of The Nashville, Chattanooga & St. Louis Railway, except when other sources are stated herein, and is made in support of the protest filed by said Railway with the Railroad and Public Utilities Commission of Tennessee with respect to the assessment of its properties for taxation in Tennessee for the biennium 1938-1939.

L. E. McKeand, Comptroller, The Nashville, Chattanooga & St. Louis Railway.

Subscribed and sworn to before me this 30th day of August, 1938. Wm. C. Crutchfield, Notary Public.
(Seal.)

[fol. 528]

L. F. McKeand
EXHIBIT No. 1

A Statement Showing the Income Accounts of The Nashville, Chattanooga & St. Louis Railway for the Years 1931 to 1937, Inclusive

Items	1931	1932	1933	1934	1935	1936	1937
Average Miles Operated.....	1,203.39	1,203.39	1,203.39	1,203.39	1,173.71	1,150.45	1,118.68
Operating Revenues:							
Freight.....	\$12,284,179	\$9,250,963	\$10,391,187	\$10,507,806	\$9,976,900	\$11,555,569	\$14,545,556
Passenger.....	1,419,860	919,629	763,816	884,604	951,446	1,116,144	1,207,133
Mail.....	641,366	599,747	591,308	600,984	603,881	620,315	636,155
Express.....	324,816	242,313	238,491	321,982	346,210	383,973	392,337
Other Transportation Revenue.....	189,743	139,277	162,111	187,454	204,778	226,240	218,554
Incidental.....	190,508	157,689	144,883	151,304	154,746	166,592	220,464
Joint Facility—Cr.....	100,837	58,178	97,245	88,001	73,608	85,504	87,439
Joint Facility—Dr.....	*11,055	*12,680	*7,953	*8,434	*8,077	*8,681	*8,205
Total Railway Operating Revenues.....	\$15,140,254	\$11,355,116	\$12,381,088	\$12,733,701	\$12,303,492	\$14,145,656	\$14,299,433
Operating Expenses:							
Maintenance of Way and Structures.....	\$2,527,323	\$1,598,448	\$1,724,819	\$1,664,934	\$1,639,944	\$1,784,806	\$1,800,822
Maintenance of Equipment.....	3,171,276	2,455,855	3,041,455	2,958,770	2,927,650	3,377,899	3,481,509
Traffic.....	813,463	676,981	644,117	656,190	692,499	731,807	769,945
Transportation.....	6,105,864	4,713,696	4,683,974	5,030,588	5,113,814	5,423,199	5,732,387
Miscellaneous Operations.....	79,103	55,141	60,589	68,763	78,958	88,260	95,556
General.....	894,781	656,728	642,472	674,526	675,603	688,162	640,037
Transportation for Investment—Cr.....	*10,945	*4,954	*4,195	*5,066	*7,478	*8,773	*10,084
Total Railway Operating Expenses.....	\$13,580,865	\$10,151,895	\$10,793,231	\$11,048,705	\$11,120,990	\$12,085,360	\$12,510,172
Income Items:							
Operating Revenues, Less, Operating Expenses.....	\$1,559,389	\$1,203,221	\$1,587,857	\$1,684,996	\$1,182,502	\$2,060,296	\$1,789,261
Railway Tax Accruals.....	590,550	405,979	362,612	437,291	455,153	541,497	877,158
Uncollectible Railway Revenue.....	2,383	8,266	1,835	2,619	2,031
Equipment Rents (Net).....	*461,332	*377,176	*428,495	*435,893	*369,210	*310,032	*260,581
Joint Facility Rents (Net).....	317,291	363,452	197,687	144,351	466,902	174,075	188,768
Total Railway Operating Income.....	\$822,215	\$712,254	\$962,662	\$903,541	\$823,010	\$1,382,842	\$840,290

L. E. McKeand

Exhibit No. 1—Continued

A Statement Showing the Income Accounts of The Nashville, Chattanooga & St. Louis Railway for the Years 1931 to 1937, Inclusive

Items	1931	1932	1933	1934	1935	1936	1937
Non-Operating Income:							
Income from Lease of Road	\$4,269	\$5,067	\$5,012	\$5,005	\$5,002	\$5,020	\$5,062
Miscellaneous Rent Income	117,920	36,153	39,133	40,289	45,587	47,679	41,752
Miscellaneous Non-Operating Property	34,441	88,986	70,356	55,072	58,116	66,455	76,173
Separately Operated Properties—Profit	1,794	2,813		1,233	1,779	441	266
Dividend Income	12,998	63,768	12,984	8,680	8,680	8,721	8,721
Income from Funded Securities	46,655	54,627	68,276	78,746	78,579	78,027	89,541
Income from Unfunded Securities and Accounts	137,918	182,786	89,109	54,624	34,483	21,101	21,897
Miscellaneous Income			49	46	69	44	44
Total Non-Operating Income	\$355,995	\$434,200	\$284,919	\$243,693	\$232,295	\$227,453	\$243,456
Gross Income	\$1,178,210	\$1,149,454	\$1,277,521	\$1,197,237	\$755,305	\$1,610,295	\$1,083,746
Deductions from Gross Income:							
Rent for Leased Roads	\$806,506	\$806,506	\$806,506	\$806,506	\$806,506	\$817,482	\$806,132
Miscellaneous Rents	193	145	202	151	216	192	169
Miscellaneous Tax Accruals	56,311	52,182	43,455	38,593	50,255	56,950	55,622
Separately Operated Properties—Loss	368		1,969	10	10	20	21
Interest on Unfunded Debt	729,426	718,836	708,246	697,656	687,066	681,450	690,907
Interest on Funded Debt	4,831	5,970	9,469	6,260	2,712	2,202	2,518
Miscellaneous Income Charge							
Total Deductions from Gross Income	\$1,597,635	\$1,583,639	\$1,569,847	\$1,549,176	\$1,546,765	\$1,558,286	\$1,555,369
Net Corporate Income	\$419,425	\$484,185	\$292,326	\$351,939	\$791,460	\$51,999	\$471,623

* Red in copy.

[fol. 529] The Nashville, Chattanooga & St. Louis Railway
 A Statement Showing the Income Accounts of the Nashville, Chattanooga &
 St. Louis Railway for the Six Months Ended June 30th, 1938

Items	Six months 1938
Average Miles Operated	4,115.51
Operating Revenues:	
Freight	\$5,338,711
Passenger	556,586
Mail	307,706
Express	162,247
Other Transportation Revenue	90,568
Incidental	126,152
Joint Facility—Cr.	43,174
Joint Facility—Dr.	3,877
Total Railway Operating Revenues	\$6,621,268
Operating Expenses:	
Maintenance of Way and Structures	\$725,296
Maintenance of Equipment	1,151,726
Traffic	394,681
Transportation	2,772,161
Miscellaneous Operations	53,967
General	297,246
Transportation for Investment—Cr.	2,108
Total Railway Operating Expenses	\$5,392,896
Income items:	
Operating Revenue Less Operating Expenses	\$1,228,369
Railway Tax Accruals	454,747
Uncollectible Railway Revenue	
Equipment Rents (Net)	255,896
Joint Facility Rents (Net)	87,736
Net Railway Operating Income	\$2,026,752
Non-Operating Income:	
Income from Lease of Road	2,626
Miscellaneous Rent Income	21,372
Miscellaneous Non-Operating Physical Property	38,962
Separately Operated Properties—Profit	
Dividend Income	24
Income from Funded Securities	38,216
Income from Unfunded Securities and Accounts	8,264
Miscellaneous Income	22
Total Non-Operating Income	\$109,536
Gross Income	\$2,136,288
Deductions from Gross Income:	
Rent from Leased Roads	\$403,256
Miscellaneous Rents	97
Miscellaneous Tax Accruals	27,959
Separately Operated Properties—Loss	
Interest on Funded Debt	345,030
Interest on Unfunded Debt	594
Miscellaneous Income Charges	
Total Deductions from Gross Income	\$776,841
Net Corporate Income	\$1,359,447

* Red in copy.

(Here follows 1 pasted, Exhibit No. 2, side folio 530.)

306A

L. E. McKeand

Exhibit No. 2

[fol. 530]

A statement showing annual operating and financial results obtained by The NC&StL Railway during the past twenty-two years

Years Ended Dec. 31st	Average miles of road operated	Total Tons Revenue Freight Carried	Gross Freight Revenue	Gross Passenger Revenue	Total Operating Revenues	Operating Expenses	Operating Ratio	Railway Tax Accruals	Employees Compensation	Ratio Employ- ees Compensation to Total Operating Revenues	Net Railway Operating Income	Net Corporate Income
1916	1236 53	5,878,881	\$9,562,272	\$2,876,076	\$13,519,588	\$9,749,810	72.12	\$343,843	\$6,707,680	49.61	\$4,092,924	\$3,056,935
1917	1236 52	6,205,605	10,431,355	3,558,400	15,194,755	11,550,032	76.01	661,979	7,506,896	49.40	3,965,129	2,839,317
* 1918	1239 48	7,050,961	14,554,220	5,978,979	21,757,403	17,641,191	81.08	548,936	13,103,689	60.23	3,952,294	2,801,387
* 1919	1247 03	5,808,714	13,392,295	5,381,541	20,044,315	18,545,727	92.52	809,481	13,143,561	65.57	879,256	*149,006
* 1920	1247 03	7,254,047	16,873,107	5,661,011	24,491,175	25,037,952	102.23	625,500	17,431,479	71.17	*560,044	*1,956,843
1921	1258 50	5,277,759	14,323,243	5,115,363	20,924,602	19,607,276	93.70	564,206	13,228,965	63.22	1,071,618	*259,802
1922	1258 54	5,994,427	16,055,719	4,678,038	22,353,763	19,207,688	85.93	420,227	13,237,973	59.22	3,094,208	1,680,522
1923	1258 49	7,336,264	18,027,477	5,060,565	24,801,787	21,453,047	86.50	701,900	14,731,569	59.40	3,061,971	1,628,806
1924	1258 95	6,935,048	17,044,426	4,815,185	23,601,646	19,480,970	82.54	651,900	13,628,733	57.74	3,433,767	1,955,609
1925	1259 04	6,820,302	17,317,770	4,834,798	24,000,050	19,185,096	79.94	759,516	13,702,393	57.09	3,937,805	2,529,042
1926	1259 53	7,350,368	17,764,342	4,503,571	24,023,878	18,992,860	79.06	1,075,000	13,667,074	56.89	4,018,155	2,511,258
1927	1259 78	7,184,999	17,151,537	3,849,645	22,905,626	18,282,454	79.82	960,997	13,063,451	57.03	3,841,261	2,325,821
1928	1259 76	7,910,659	18,015,059	3,335,146	23,335,033	18,127,193	77.68	978,923	12,963,845	55.56	4,232,896	2,972,668
1929	1235 26	8,187,007	18,180,107	2,909,440	23,203,724	17,397,378	74.98	1,081,000	12,731,511	54.87	4,845,801	3,623,948
1930	1203 39	7,370,044	15,462,401	2,095,942	19,317,453	16,343,711	84.61	767,537	11,518,043	59.63	2,112,288	922,137
1931	1203 39	5,278,168	12,284,179	1,419,860	15,140,254	13,580,865	89.70	590,550	9,513,909	62.84	822,215	*419,425
1932	1203 39	3,903,180	9,250,963	919,629	11,355,116	10,151,895	89.40	405,979	7,100,379	62.53	715,254	*434,185
1933	1203 39	4,325,272	10,391,187	763,816	12,381,088	10,793,231	87.18	362,612	7,240,957	58.48	992,602	*292,326
1934	1203 39	4,493,650	10,507,806	884,604	12,733,701	11,048,705	86.77	437,291	7,522,098	59.07	953,544	*351,939
1935	1173 71	4,234,381	9,976,900	951,446	12,303,492	11,120,990	90.39	455,153	7,896,137	64.18	523,010	*791,460
1936	1150 45	5,145,727	11,555,569	1,116,144	14,145,656	12,085,360	85.44	541,497	8,512,881	60.18	1,352,842	51,999
1937	1118 68	5,296,706	11,545,556	1,207,133	14,299,433	12,510,172	87.49	877,158	9,006,060	62.98	840,290	*471,623

* Government Operation 1918, 1919 and January and February of 1920.

* Red in copy.

L. E. McKeand
Examiner No. 3
The Nashville, Chattanooga & St. Louis Railway
Accounting Department
Nashville, Tenn.

First Main Track and Transportation Service Miles
Year 1937

	First Main Track Miles	Locomotive Miles	Total Car Miles	Gross Ton Miles	Total Train Miles	Passenger Miles
System.....	1,111 86	5,544,904	92,528,769	3,799,055,176	4,108,769	66,557,689
System in Tennessee.....	796 53	3,888,508	64,041,618	2,625,913,137	2,849,978	44,753,089
System outside Tennessee.....	315 33	1,656,396	28,487,151	1,173,142,039	1,258,791	21,804,600
System (Main Lines only).....	689 94	5,090,854	88,184,774	3,634,574,720	3,791,300	65,803,547
Centerville Branch.....	60 78	38,378	300,929	11,183,094	26,773	11,713
Shelbyville Branch.....	8 44	10,048	56,295	1,942,509	10,048	82,892
Sparta Branch.....	60 86	50,457	466,995	18,807,142	38,686	178,400
Columbia Branch.....	85 94	92,476	1,099,379	39,832,177	70,308	170,741
Huntsville Branch.....	80 48	108,981	870,782	30,239,800	71,232	124,339
Tracy City Branch.....	39 18	49,084	709,342	28,505,699	33,170	58,565
Sequatchie Valley Branch.....	68 10	65,338	696,820	28,837,865	44,770	59,917
Rome.....	18 14	39,288	143,453	5,132,170	22,482	67,575
Total Branches.....	421 92	454,050	4,343,995	164,480,456	317,469	754,142

Averages per Main Track Mile

Year 1937

	First Main Track Miles	Locomotive Miles	Total Car Miles	Gross Ton Miles	Total Train Miles	Passenger Miles
System.....	1,111 86	4,987	83,220	3,416,847	3,695	59,862
System in Tennessee.....	796 53	4,882	80,401	3,290,691	3,578	56,185
System outside Tennessee.....	315 33	5,253	90,341	3,720,363	3,992	69,149
System (Main Lines only).....	689 94	7,379	127,815	5,267,958	5,495	95,376
Centerville Branch.....	60 78	631	4,951	183,993	440	193
Shelbyville Branch.....	8 44	1,191	6,658	230,155	1,191	9,821
Sparta Branch.....	60 86	829	7,673	309,023	636	2,931
Columbia Branch.....	85 94	1,076	12,792	463,488	818	1,987
Huntsville Branch.....	80 48	1,354	10,820	375,743	885	1,545
Tracy City Branch.....	39 18	1,253	18,105	727,557	847	1,495
Sequatchie Valley Branch.....	68 10	959	10,232	423,464	657	880
Rome Branch.....	18 14	2,166	7,908	282,920	1,239	3,725
Total Branches.....	421 92	1,076	10,296	389,838	752	1,787

Note: 3.65 Mi. First Main Track Miles West Nashville Branch excluded account no service miles.
Locomotive Miles in this table do not include work train miles.
Car Miles do not include marine transfer miles on Tennessee River in Alabama.

1931 321

L. E. McKeand

EXHIBIT No. 4

The Nashville, Chattanooga & St. Louis Railway
Accounting Department
Nashville, Tenn.

Year	Income Statement Data			Misc'l. Tax		Fixed Charges
	Net Railway Operating Income	Income from Lease of Road Account 509	Misc'l. Rent Income Account 510	Misc'l. Non- Operating Physical Property Income Account 511	Accrual Acct. 544 (On Misc'l. Non-Operating Physical Property)	
1931	\$822,214.77	\$4,269.69	\$117,920.36	\$34,440.77	\$56,311.00	\$1,540,763.50
1932	715,254.19	5,066.94	36,153.22	88,986.34	52,181.59	1,531,312.69
1933	992,602.02	5,012.00	39,132.23	70,350.25	43,454.93	1,524,221.22
1934	953,543.91	5,005.18	40,289.04	55,071.44	38,592.65	1,510,422.28
1935	523,010.42	5,001.78	45,587.06	58,116.04	50,255.02	1,496,284.51
1936	1,382,841.51	5,026.35	47,679.17	66,454.86	56,950.47	1,501,134.20
1937	840,289.90	5,062.10	41,752.32	76,173.27	55,622.33	1,499,556.90
Total	\$6,226,756.72	\$34,444.04	\$368,513.40	\$449,598.97	\$353,367.99	\$10,603,695.30
Average per annum	\$889,965.25	\$4,920.58	\$52,644.77	\$64,228.42	\$50,481.14	\$1,514,813.61
Adjusted Income						
Average Net Railway Operating Income per annum			\$889,965.25			
Add						
Average per annum Income from Lease of Road			4,920.58			
Average per annum Misc'l. Rent Income			52,644.77			
Total Adjusted Net Railway Operating Income			\$947,530.60			

Average Misc'l. Non-Operating Physical Property Income per Annum.....	\$64,228.42
Deduct	
Average Misc'l. Tax Accruals (on Misc'l. Non-Operating Physical Property) per Annum.....	\$50,481.14
Net Income from Misc'l. Non-Operating Physical Property.....	\$13,747.28
Net Income Available for Fixed Charges and Dividend	
Adjusted Net Railway Operating Income.....	\$947,530.60
Net Income from Non-Operating Property.....	13,747.28
Average Total Seven Years.....	\$961,277.88
Fixed Charges (Average Seven Years).....	1,514,813.61
Annual Average Deficit.....	\$553,535.73

Received for filing, Nashville, Aug. 31, 1938. Railroad & Public Utilities Commission, State of Tennessee.

[fol. 533]

L. E. McKeand,

EXHIBIT No. 5

The Nashville, Chattanooga & St. Louis Railway
Accounting Department
Nashville, Tennessee.

The following valuation figures are based upon the Federal valuation inventory as of June 30th, 1916, (31 I.C.C. Valuation Reports, page 567), advanced to December 31, 1937 by taking into account the cost of additions and betterments and retirements of property in accordance with accounting principles promulgated by the I.C.C. in its Valuation Order No. 3, second revised issue, of August 1919.

The totals include all land, buildings and property other than equipment, used for carrier purposes. The allocation to Tennessee is the allocation made by the I.C.C., brought to December 31, 1937.

	On the System	In Tennessee
The N. C. & St. L. Ry.	\$41,474,093	\$34,022,352
The W. & A. Railroad.	11,121,243	1,305,887
The Paducah & Memphis Railroad	8,555,933	6,947,543
The L. & N. Terminal Co. (50% only)	1,432,058	1,432,058
Seaboard Air Line Depot (Atlanta)	78,858	0
All Carrier Land used	16,143,946	6,814,703
Total	\$78,806,131	\$50,522,543
Ratio of Tennessee Property To System Property		64.11%

(Here follows 1 paster, Exhibit No. 6, side folio 534.)

[fol. 534]

310A

L. E. McKeand

EXHIBIT No. 6

The Nashville, Chattanooga & St. Louis Railway
Accounting Department
Nashville, Tenn.

Branch	Mileage Abandoned	Date Abandoned	Assessment				Salvage Recovered	Credit Investment Account
			Year	Per Mile	Distributable	Localized		
Middle Tennessee and Alabama	16.35		1928(1)	\$9,398	\$153,661	\$2,938	\$156,599	
Ala. Tenn.	20.56	4/20/29	1928(1)	6,500	133,640	3,314	136,954	
	36.91						\$293,553	\$53,281.89
Swan Creek	1.90	7/31/30	1930	10,000	19,000	0	19,000	\$422,409.24
Swan Creek	9.10	9/1/31	1931	6,000	54,600	80	54,680	2,659.31
Pryor Ridge Spur	5.50	1/15/30	1930	12,300	67,650	0	67,650	980.03(2)
Lebanon Branch	29.47	7/14/35	1935	3,300	97,251	21,555	118,806	6,641.61
McMinnville Branch								54,486.00
DeRossett to Chitty	8.20	3/11/35	1935	5,300	43,460	2,605	46,155	5,257.81
Rock Spur to Ravenscroft	12.50	2/1/37	1937	5,300	66,250	5,470	71,720	90,565.19
Perryville Branch	24.14	10/31/36	1935(1)	3,300	79,662	6,920	86,582	59,549.82
								321,364.92
Totals	127.72				\$715,174	\$42,972	\$758,146	21,054.98
								194,439.37
								51,887.00
								321,661.13
								30,416.91 NC&St Ry.
								344,570.23 L&N RR.

Note No. 1—Last assessment not used as assessment was reduced for that year since railway had filed application to abandon.

Note No. 2—Investment in these facilities, when made, was charged to Operating Expenses which is reason for such small credit to Investment Account.

[fol. 535]

L. E. McKeand

EXHIBIT No. 7

The Nashville, Chattanooga & St. Louis Railway
Accounting Department
Nashville, Tenn.

Ratio of Fixed Charges to Revenues

Item	Annual Average 24 Years 1893-1916	Annual Average 8 Years. 1930-1937	Year 1937
Total Operating Revenues	\$9,094,707	\$13,959,524	\$14,299,433
Fixed Charges	\$1,463,785	\$ 1,514,532	\$ 1,497,039
Ratio of Fixed Charges to Total Operating Revenues	16.1	10.8	10.5

[fols. 536-537]

L. E. McKeand

EXHIBIT No. 8

The Nashville, Chattanooga & St. Louis Railway
Accounting Department

Net Railway Operating Income in Tennessee—1937

		Per Mile of Road Operated
Railway Operating Revenues System	\$14,299,433	\$12,819
“ “ Expenses “	\$12,510,172	\$11,215
Net Railway Operating Income “	\$840,290	\$753
Mileage Operated “	1,115.51	
Railway Operating Revenues Tennessee	\$10,203,796	\$12,752
“ “ Expenses “	\$8,857,317	\$11,069
Net Railway Operating Income “	\$432,556	\$541
Mileage Operated “	800.18	
Railway Operating Revenues Outside Tenn.	\$4,095,637	\$12,988
“ “ Expenses “ “	\$3,652,855	\$11,584
Net Railway Operating Income “ “	\$407,734	\$1,293
Mileage Operated “ “	315.33	

Ratios Net Railway Operating Income per Mile of Main Track

Per Mile: Tennessee to System	71.84%
“ “ “ to Mileage Outside Tennessee	41.84%

NOTE:—The mileage figures in this table include all tracks operated Dec. 31, 1937, including 16 miles trackage rights at Columbia, Tennessee; and including the West Nashville branch which produced no main track revenue.

[fol. 538]

VI

EXHIBIT No. 12 TO BILL OF EXCEPTIONS

Tennessee Assessment

1934-1935

1936-1937

[fol. 539] The Nashville, Chattanooga & St. Louis Railway.
Before the Tennessee Railroad and Public Utilities Com-
mission of the State of Tennessee, Nashville.

In re: Assessment of the property returned by the Nashville, Chattanooga & St. Louis Railway for the purpose of taxation for the years 1934-1935.

History

The Nashville, Chattanooga & St. Louis Railway Company was chartered under Chapter 1 of the Acts of the General Assembly of the State of Tennessee 1845 and 1846, approved December 11, 1845. The organization of the company was perfected January 24th, 1848, and by decree of the Chancery Court of Nashville, Tennessee, May 31, 1875, the name of the corporation was changed to "The Nashville, Chattanooga & St. Louis Railway" which railway built, purchased or leased the different lines now being operated by it. In making this assessment due consideration will be given to each of the several railroads organized under separate charters and now forming a part of the Nashville, Chattanooga & St. Louis Railway.

Mileage

	Main Line
Miles of road-owned	800.82
Miles leased	390.86
Miles trackage rights	11.71
	<hr/> 1,203.39

Distribution of Main Line Mileage, owned or leased by States

State	Number of Miles	Percent
Tennessee	876.35	73.54
Alabama	113.30	9.51
Georgia	142.27	11.94
Kentucky	59.76	5.01
	<hr/> 1,191.69	<hr/> 100.00%

[fol. 540] The mileage of main line owned and leased in Tennessee by divisions and the total mileage of main line of said divisions is as follows:

	Mileage in Tenn.	Total Mileage of Division
Chattanooga Division.....	124.87	151.71
Northwestern Division.....	160.99	171.51
Western and Atlantic.....	15.45	136.85
Paducah & Memphis.....	180.63	229.87
Perryville Branch.....	24.14	24.14
Lebanon Branch.....	29.47	29.47
Shelbyville Branch.....	8.44	8.44
McMinnville Branch.....	83.58	83.58
Columbia Branch.....	85.78	85.78
Huntsville Branch.....	2.58	80.48
Tracy City Branch.....	39.18	39.18
Squatchie Valley Branch.....	54.79	57.68
Orme (Dorans Cove) Branch.....	2.02	10.42
Centreville Branch.....	60.78	60.78
West Nashville Branch.....	3.65	3.65
Rome Branch.....		18.14
	876.35	1,191.68
Percent.....	73.54%	100.00%

The corporation operates 1203.39 miles of main track, of which 11.71 miles is trackage rights and 390.86 miles is leased, leaving only 800.82 miles owned by it and upon which its securities rest and in which its stockholders have an equity. 136.85 miles of track belongs to and is leased from the State of Georgia. It is not bonded and stockholders have no equity in the property other than the value of the leasehold. 254.01 miles of track belongs to and is leased from the Louisville and Nashville R. R. Company. It is mortgaged by bonds issued by the Louisville and Nashville Railroad, first by a first mortgage bond of \$4,619,000.00 and then by a second mortgage of an indeterminate amount. Of the 876.35 miles of main track returned for taxation in Tennessee only 656.13 miles are owned by the Nashville, Chattanooga & St. Louis Railway.

Bonds

The bonded indebtedness resting upon the property returned by respondents for the purpose of taxation is:

Property owned.....	\$16,800,000
Equipment.....	653,000
Paducah and Memphis Division.....	4,619,000
1/2 of L. & N. Terminals, Nashville.....	1,250,000
	<hr/>
	\$23,322,000

[fol. 541] The Western and Atlantic Division (136.85) belongs to the State of Georgia and is not bonded. Respondent leases the Western and Atlantic Railway (136.85 miles) from the State of Georgia at an annual rental of \$540,000.00 and agrees to expend an average of \$60,000 per annum in improvements and betterments, all such improvements and betterments to become the property of the State of Georgia, which arrangement is equivalent to an annual rental of \$600,000.00. Based upon this rental charge the corporation has in the past valued this line at \$10,000,000.00. It is not bonded.

The Nashville, Chattanooga & St. Louis Railway also guarantees by endorsement or by agreement with other railroads the following bonds of other companies:

L. & N. Terminal Company (Nashville)	\$2,601,000
Memphis Union Station Company	2,500,000
Paducah & Illinois R. R. Co.	3,433,000

Stock

The capital stock of the Nashville, Chattanooga & St. Louis Railway is \$25,600,000.00. During 1933 no dividends were paid.

The company gives the value of its stock based upon quotations for January 10, 1934, as \$8,448,000.00, which is an increase of 116% over January 10, 1932.

The stockholders have no equity in the leased lines other than the value of the leaseholds. In the stock value is reflected the value of certain non-taxable securities and holdings which will be given due consideration.

Earnings, 1933

Railway operating revenues		\$12,381,088
Joint facility rent		197,687
		<hr/> 12,578,775
Railway operating expenses	\$10,793,231	
Taxes	362,612	
Uncollectible Revenue	1,835	
Equipment rents	428,495	
	<hr/> 428,495	11,586,173
Net Railway Operating Income		<hr/> \$992,602

As compared with 1931 and 1933 revenues and expenses show:

Railway Operating Revenues decreased	18.2%
Railway Operating Expenses decreased	20.5%
Railway Tax Accruals decreased	38.5%

[fol. 542]	1927	Net Railway Operating Income	\$3,841,261
	1928	" " " "	4,232,896
	1929	" " " "	4,845,801
	1930	" " " "	2,112,288
	1931	" " " "	822,215.
	1932	" " " "	715,254
	1933	" " " "	922,602

In addition to its net railway operating income, the Nashville, Chattanooga & St. Louis Railway has other sources of income among which are rentals which it receives on non-operating property.

Non-Operating Property

The corporation owns property which it returns for taxation and which is not used in the service of transportation its value is not reflected in the net railway operating income of the Corporation. The corporation returns for taxation property which it does not own, the value of which is not included in its bonds or its stock certificates or is in any way reflected in its net Railway operating income, is not used in the service of transportation and a large portion of which is business property located in the City of Chattanooga. Income from this Non-Operating physical property in 1933 was \$114,500.

Securities and Choses in Action on Hand Jan. 10, 1934

Situs in Tennessee	\$3,906,097.80
Situs outside Tenn.	857,160.73

Included in those securities in Tennessee is an amount of \$985,830.07 representing U. S. Treasury Bonds.

The corporation values its rolling stock, including automobiles at \$7,988,050.83.

Franchise

The corporation was asked to give the value of its franchises and the method by which ~~said value~~ value was arrived at, which it failed or refused to do, claiming that there was no known rule or method by which its value could be determined.

Localized Property

The corporation reports the value of its localized property as follows:

Outside Tenn.	Localized Property, Leased Rail, etc.
Alabama	\$174,386
Georgia	2,407,007
Kentucky	139,192
	<hr/>
	\$2,720,585

[fol. 543] We find the value of such localized property in Tennessee as returned by the corporation to be \$3,752,514.00.

Corporate Property

Final valuation as made by Interstate Commerce Commission	\$69,262,132.00
Additions and Betterments since valuation date, Jan. 30, 1916	14,234,916.00
Equipment	7,988,051.00
	<hr/>
	\$91,485,099.00.

In valuing the property of the corporation for the purpose of taxation, we will look to and consider the capital stock, corporate property, franchise and gross receipts, the market value of the shares of stock and bonded indebtedness and all evidence as are afforded by the returns, statements and schedules made by the respondent, together with such other evidence taken as to enable this Board to fairly and equitably fix the actual cash value of the property to be assessed, making due allowance for all non-taxable securities held.

Conclusions

Value of entire property	\$24,488,636.00
Less localized property	6,473,099.00
Value entire distributable property (1191.68)	18,015,537.00
Value per mile distributable property	15,117,764.00
Value distributable property in Tenn. (876.35)	13,248,452.00
Less exemption \$1,000	13,247,452.00

This Board in distributing this value over the different railroads, lines, divisions, and branches in Tennessee, now

forming a part of the Nashville, Chattanooga & St. Louis Railway, will look to and consider the character and value of the different railroads, lines, divisions and branches, capital stock, corporate property, franchises and gross receipts, and the market value of the shares of stock and bonded indebtedness, as well as to the intangible value due to the organic relation of the different railroads, lines, divisions and branches to the systems as a whole. The company failed or refused to report the original cost or book value separately and in considering these items, we can only use our judicial knowledge of conditions as we find them.

[fol. 544]

Distribution

Division	Miles	Value per Mile	Total
Chattanooga Division	124.87	\$37,300	\$4,657,651
Northwestern Division	160.99	21,900	3,525,681
Western & Atlantic	15.45	37,300	576,285
Paducah & Memphis	180.63	14,200	2,564,946
Perryville Branch	24.14	3,300	79,662
Lebanon Branch	29.47	3,300	97,251
Shelbyville Branch	8.44	3,300	27,852
McMinnville Branch	83.58	5,300	442,974
Columbia Branch	85.78	5,300	454,634
Huntsville Branch	2.58	3,300	8,514
Tracy City Branch	39.18	6,300	246,834
Sequatchie Valley Branch	54.79	5,700	312,303
Orme (Dorans Cove) Branch	2.02	3,300	6,666
Centerville Branch	60.78	3,300	200,574
West Nashville Branch	3.65	12,500	45,625
	876.35		\$13,247,452

[fol. 545] The Nashville, Chattanooga & St. Louis Railway

Before the Railroad and Public Utilities Commission of the
State of Tennessee, Nashville

In Re: Assessment of the property returned by The
Nashville, Chattanooga and St. Louis Railway for the pur-
pose of taxation for the years 1936-1937.

History

The Nashville, Chattanooga and St. Louis Railway Com-
pany was chartered under Chapter I of the Acts of the
General Assembly of the State of Tennessee 1845 and 1846,
approved December 11, 1845. The organization of the
company was perfected January 24, 1848 and by decree of
the Chancery Court of Nashville, Tennessee, May 31, 1875,
the name of the corporation was changed to "The Nashville,
Chattanooga and St. Louis Railway" which railway built,

purchased or leased the different lines now being operated by it. In making this assessment due consideration will be given to each of the several railroads organized under separate charters and now forming a part of The Nashville, Chattanooga and St. Louis Railway.

Mileage

	Main Line
Miles of road owned	763.45
Miles leased	390.86
Miles trackage rights	.16
	<hr/> 1,154.47

Distribution of main line mileage, owned or leased by States.

State	Number of Miles	Percent
Tennessee	838.98	72.68
Alabama	113.30	9.82
Georgia	142.27	12.32
Kentucky	59.76	5.18
	<hr/> 1,154.31	<hr/> 100.00%

The mileage of main line owned and leased in Tennessee by divisions and the total mileage of main line of said divisions is as follows:

	Mileage in Tenn.	Total Mileage of Division
Chattanooga Division	124.87	151.71
Northwestern Division	160.99	171.51
Western and Atlantic	15.45	136.85
Paducah & Memphis	180.63	229.87
Perryville Branch	24.14	24.14
Shelbyville Branch	8.44	8.44
McMinnville Branch	75.68	75.68
Columbia Branch	85.78	85.78
Huntsville Branch	2.58	80.48
Tracy City Branch	39.18	39.18
Squatchie Valley Br.	54.78	57.68
Orme (Dorans Cove) Br.	2.03	10.42
Centerville Branch	60.78	60.78
West Nashville Br.	3.65	3.65
Rome Branch		18.14
	<hr/> 838.98	<hr/> 1,154.31
Percent:	72.68%	100.00%

[fol. 546] The corporation operates 1,154.47 miles of main track of which .16 miles is trackage rights and 390.86 miles

is leased, leaving only 763.45 miles owned by it and upon which its securities rest and in which its stockholders have an equity. 136.85 miles of track belongs to and is leased from the State of Georgia. It is not bonded and stockholders have no equity in the property other than the value of the leasehold. 254.01 miles of track belongs to and is leased from the Louisville and Nashville Railroad Company. It is mortgaged by bonds issued by the Louisville and Nashville Railroad, first by a first mortgage bond of \$4,619,000 and then by a second mortgage of an indeterminate amount. Of the 838.98 miles of main track returned for taxation in Tennessee only 618.76 miles are owned by The Nashville, Chattanooga and St. Louis Railway.

Bonds

The bonded indebtedness resting upon the property returned by respondents for the purpose of taxation is:

Property owned	\$16,800,000
Equipment	240,000
Paducah & Memphis Div.	4,619,000
1/2 L. & N. Terminals-Nashville	1,250,000
	<hr/>
	\$22,909,000

The Western and Atlantic Division (136.85) belongs to the State of Georgia and is not bonded. Respondent leases the Western & Atlantic Railway (136.85 miles) from the State of Georgia at an annual rental of \$540,000 and agrees to expend an average of \$60,000 per annum in improvements and betterments, all such improvements and betterments to become the property of the State of Georgia, which arrangement is equivalent to an annual rental of \$600,000. Based upon this rental charge the corporation has in the past valued this line at \$10,000,000. It is not bonded.

The Nashville, Chattanooga and St. Louis Railway also guarantees by endorsement or by agreement with other railroads the following bonds of other companies.

L. & N. Terminal Co. (Nashville)	\$2,601,000
Memphis Union Station Co.	2,500,000
Paducah & Illinois R. R. Co.	2,433,000

Stock

The capital stock of The Nashville, Chattanooga and St. Louis Railway is \$25,600,000. During 1935, no dividends were paid.

The company gives the value of its stock based upon quotations for January 10, 1936 as \$5,888,000.

The stockholders have no equity in the leased lines other than the value of the leaseholds. In the stock value is reflected the value of certain non-taxable securities and holdings which will be given due consideration.

Earnings 1935

Railway Operating revenues.....		\$12,303,492
Joint Facility rent.....		166,902
		<hr/> \$12,470,394
Railway operating expenses.....	\$11,120,990	
Taxes.....	455,153	
Uncollectible revenue.....	2,031	
Equipment rents.....	369,210	
		<hr/> 11,947,384

Net Railway Operating Income.....	\$523,010
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[fol. 547] Net Railway Operating Income First 6 months 1936..	\$384,214
1929 Net Railway Operating Income.....	4,845,801
1930 " " " ".....	2,112,288
1931 " " " ".....	822,215
1932 " " " ".....	715,254
1933 " " " ".....	992,602
1934 " " " ".....	953,544
1935 " " " ".....	523,010

In addition to its net railway operating income, The Nashville, Chattanooga and St. Louis Railway has other sources of income among which are rentals which it receives on non-operating property.

Non-Operating Property

The corporation owns property which it returns for taxation and which is not used in the service of transportation. Its value is not reflected in the net railway operating income of the Corporation. The corporation returns for taxation property which it does not own, the value of which is not included in its bonds or its stock certificates or is in any way reflected in its net Railway Operating Income, is not used in the service of transportation and a large portion of which is business property located in the City of Chattanooga. Income from this non-operating property in 1935 was \$103,703.

Securities and Choses in Action on Hand Jan. 10, 1936

Sitts in Tennessee	\$2,773,146
Situs outside Tennessee	1,260,683

Included in those securities in Tennessee is an amount of \$1,030,830 representing U. S. Treasury Bonds.

The corporation values its rolling stock including automobiles at \$7,453,718.

Franchise

The corporation was asked to give the value of its franchise and the method by which said value was arrived at, which it failed or refused to do, claiming there was no known rule or method by which its value could be determined.

Localized Property

The corporation reports the value of its localized property as follows:

Outside Tenn.	Localized Property, Leased Rail, etc.
Alabama	\$209,528
Georgia	2,360,522
Kentucky	106,262
	<hr/>
	\$2,676,312

We find the value of such localized property in Tennessee as returned by the corporation to be \$3,574,054.

[fol. 548] Corporate Property

Final valuation as made by the Interstate Commerce Commission	\$69,262,132
Additions & betterments since valuation date	
Jan. 30, 1916	12,893,138
Equipment	7,453,718
	<hr/>
	\$89,608,988

In valuing the property of the corporation for the purpose of taxation, we will look to and consider the capital stock, corporate property, franchise and gross receipts, the market value of the shares of stock and bonded indebtedness and all evidence as are afforded by the returns,

statements and schedules made by the respondent, together with such other evidence taken as to enable this Board to fairly and equitably fix the actual cash value of the property to be assessed, making due allowance for all non-taxable securities held.

Conclusions

Value of entire property (1,154.31)	\$24,035,893.
Less localized property	6,250,366.
Value entire distributable property	17,785,527.
Value per mile distributable property	15,407.929
Value distributable property in Tenn. (838.98)	12,926,944.
Less legal exemption (\$1000)	12,925,944.

[fol. 549] This Board in distributing this value over the different railroads, lines, divisions and branches in Tennessee, now forming a part of the Nashville, Chattanooga & St. Louis Railway, will look to and consider the character and value of the different railroad lines, divisions and branches, capital stock, corporate property, franchise and gross receipts, and the market value of the shares of stock and bonded indebtedness, as well as to the intangible value due to the organic relation of the different railroads, lines, divisions and branches to the systems as a whole. The company failed or refused to report the original cost or book value separately and in considering these items, we can only use our judicial knowledge of conditions as we find them.

Distribution

Division	Miles	Value per Mile	Total
Chattanooga Division	124 87	\$37,000	\$4,620,190
Northwestern Division	160 99	21,600	3,477,384
Western & Atlantic	15 45	37,000	571,650
Paducah & Memphis	180 63	14,000	2,528,820
Perryville Branch	24 14	2,000	48,280
Shelbyville Branch	8 44	3,300	27,852
McMinnville Branch	75 68	5,300	401,104
Columbia Branch	85 78	5,300	454,634
Huntsville Branch	2 58	3,300	8,514
Tracy City Branch	39 18	6,000	235,080
Sequatchie Valley Branch	54 78	5,500	301,290
Orme (Dorans Cove) Branch	2 03	3,300	6,699
Centerville Branch	60 78	3,300	200,574
West Nashville Branch	3 65	12,010	43,873
Total	838.98		\$12,925,944

[fol. 550-551] STATE OF TENNESSEE
County of Davidson:

I, W. S. Hackworth, Assistant Real Estate Agent of The Nashville, Chattanooga & St. Louis Railway, make oath that the foregoing is a true and perfect copy of the statement of assessment furnished the said Railway by the Railroad and Public Utilities Commission of the State of Tennessee in 1934 and in 1936.

W. S. Hackworth.

Sworn to and subscribed before me, this 27th day of August, 1938.

W. P. Sensing, Notary Public. (Seal.)

[fol. 552] EXHIBIT No. 15 TO BILL OF EXCEPTION

BEFORE THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF
TENNESSEE.

In re: Assessment of properties of The Nashville, Chattanooga & St. Louis Railway, 1938.

Affidavits re: Ratio of assessed value to actual value of property in Tennessee.

[fol. 553] In re: Assessment of the properties of The Nashville, Chattanooga & St. Louis Railway for ad valorem taxation for the biennium 1938-1939.

INTRODUCTORY AFFIDAVIT

The Nashville, Chattanooga & St. Louis Railway has filed original affidavits of officers of the Tennessee Taxpayers Association, of county tax assessors and county officers, and of various citizens, in support of its contention that the physical properties of other citizens and taxpayers throughout the state, and particularly in the governmental subdivisions in which the property of the Railway is located, are valued or assessed for ad valorem taxation at approximately two-thirds of their actual or fair cash value, and that an assessment of the properties of the Railway for taxation at more than two-thirds of the actual cash value as found by the Railroad and Public Utilities Commission

would violate the constitutional requirement of uniformity in assessment and taxation.

For convenient reference by the Commission copies of said affidavits are filed with this introductory affidavit, the originals of all of which are on file with the Commission, in support of the protest made by the Railway to the tentative valuation of assessment issued by the Commission on August 22, 1938.

[fol. 554] The Railway insists that the practice, among the several local tax assessors, in the various governmental subdivisions throughout the state, of assessing property owned by residents of such governmental subdivisions, and located therein, at much less than the actual cash value of such property is of such long-standing and notoriety that the Commission, the State Board of Equalization, and the several courts of the state, should take judicial knowledge of the fact.

As early as 1894, the report of the Comptroller of the Treasury, of the State of Tennessee, addressed to the members of the General Assembly, called attention to this fact. In said report the attention of the General Assembly was directed to the fact that the tax aggregate of \$319,000,000 should in fact be \$700,000,000, from which it is to be inferred that in the opinion of the Comptroller at that date the rate of assessment throughout the state was little more than half the actual value of the property assessed. We quote from said report, as published in the Legislative Journal of 1894, as follows:

“One important amendment should be made to the assessment law or embodied in a separate act. That is, the creation of a State board of assessors, whose duty shall be to equalize the work of the county assessors and the county boards of equalization between the various counties of the State. The complaint against high assessments is, as a rule, not well founded. It is the tax rate. Property should be assessed at its actual cash value and then the tax rate can be reduced. If our annual valuation of property, instead of being \$319,000,000, were \$700,000,000, as it should be, and our tax rate twenty, instead of thirty cents, our revenues would not only be increased, but the murmurs of the taxpayer because of unequal tax burdens would cease. Our State could receive no better advertisement than the carrying into execution of this plan would give.”

In 1915 the Governor of Tennessee appointed a commission to investigate assessment and taxation in Tennessee, the report of which commission is made a public record as an Appendix to the Senate and House Journals of the General Assembly for 1915. Exhibit No. 1 to this affidavit contains excerpts from said report demonstrating that in 1915 assessments for ad valorem taxation throughout the state were far below two-thirds of the actual value. The report states:

... * * In the case of whole counties there were frequent admissions by assessors and others that the tax aggregate did not constitute more than 25 per cent of the value of the property in the county, *and in no case did any assessor state that the tax aggregate constituted more than 60 per cent of the value.* One candid official, whose conscience had worried him somewhat at the wording of the oath, struck his pen through the word 'cash' and returned his assessment as at the 'actual tax value' of the property." (Italics here.)

A record was made of the proceedings had before this Commission and before the State Board of Equalization, in the matter of a protest by this Railway against the assessment made of its properties in the year 1920, on file in the Supreme Court of Tennessee, December Term, 1923, under the style *Board of Equalization of the State of Tennessee v. The Nashville, Chattanooga & St. Louis Railway*. In [fol.556] Volume II, beginning at page 119 of this record appears a statement made by Honorable B. A. Enloe, then Chairman of the Railroad Commission of the State of Tennessee, made before the Board of Equalization on October 8, 1917, in which Chairman Enloe stated the recognition by the Railroad Commission, as then constituted, of the constitutional requirement that taxation shall be equal and uniform, but stated the practice of the Commission that equalization of assessments, on the basis of assessments made against other properties, was not done by the Commission. I quote from Chairman Enloe's statement as it appears on page 122 of said record:

... * * I believe I mentioned once, while my distinguished friend, General Cates, was Attorney General of the State, something about the requirements of the law, that all properties should be assessed at their cash value, all prop-

erty in the State. I believe there is such a provision in the statute as that, I believe we have all taken an oath that we will observe it. But at the same time, there is another provision there in the constitution, and we took an oath to uphold the constitution, and the constitution says that taxation shall be equal and uniform. That is the substance of it; the idea being to make the burden of taxation rest equally upon all alike. And I think my distinguished friend said, 'You can't forget, while you have taken an oath to enforce the statute, you cannot shut your eyes and ignore the constitution; your oath is just as binding at one place as another.' You have knowledge that while properties would be assessed at—and this was the contention made by the railroads in 1897 when an assessment was proposed by Judge Bullock and Mr. Thompson and Mr. White; it came up to the Board of Equalization and Governor Taylor and his Board approved it, and was enjoined, and it went into the Federal court on the ground that other property in the state was not assessed above seventy-five per cent of its value, while the properties assessed at that time were proposed to be assessed at full value. They carried it into the Federal courts and enjoined the assessment, tied up the revenues of the State for nearly two years is my recollection; I remember McMillin was Governor when it was adjusted. It went though, to the Court of Appeals at Cincinnati and Judge Taft rendered the decision in the case and Judge Taft sustained the contention of the corporations as against the assessment, on that ground. I understood that there have been decisions by the Supreme Court of the United States in some Kentucky cases since that, in which the Supreme Court of the United States cites this decision in Tennessee and approved it.

"So, that, you cannot ignore the fact that there are other properties in this State, when you go to equalize it, that must be considered.

"Now, equalizing as between different corporations is one thing, and equalizing as between the assessments of other properties, is another. That is the function of this Board; we don't do that. * * *

Affiant has confidence in the accuracy and integrity of the survey made by the officers of the Tennessee Taxpayers Association and the results shown in the affidavit of the Executive Secretary of that Association, Mr. Wm. R.

Pouder, and the exhibit thereto, and affiant is informed that the ratio of assessed values to actual values in the several counties, as reported by the Tennessee Taxpayers Association, has been given credence and authority by the several agencies of the state government charged with the responsibility of enforcing the tax laws of the state. However, we have felt that it was proper that we make an independent investigation to test the accuracy of the report made by the Tennessee Taxpayers Association, and to that end have procured and filed the affidavits above referred to. These affidavits fully support the conclusion of the Tennessee Taxpayers Association, stated in its Third Annual Report, exhibit to the affidavit of Wm. R. Pouder, that the average [fol. 558] ratio of assessed values to actual values in the several counties of the state, for the year 1937, is approximately 66 per cent. Under the assessment laws of the state the assessment of real property made in 1937 is also the basis for the levy of ad valorem taxes for 1938, except with respect to the property of those corporations assessed by the Railroad and Public Utilities Commission. The particular attention of the Commission is requested to the statement of the Tennessee Taxpayers Association, quoted and verified by the affidavit of Mr. Pouder, that the maximum ratio of assessed value to actual value in any county of the state is 75 per cent.

Particular attention is also requested to the finding of the Tennessee Taxpayers Association, quoted in Mr. Pouder's affidavit at page 4 of the within copy that the aggregate of the assessed value of all property in Tennessee, real and personal, except the property of railroads and public utilities, has decreased from 1920 to 1937 by 28 per cent; and that the assessed value of the property of railroads and public utilities in Tennessee has decreased from 1920 to 1937 by 7 per cent. The valuation placed by the Railroad and Public Utilities Commission on the property of this Railway in Tennessee in 1920 was \$15,440,244. The proposed assessment for 1938-1939 of \$16,223,194 is an increase of \$782,950 over the assessment of this Railway for 1920, an increase of 5 per cent as compared with a general decrease of 7 per cent in the assessment of other public service corporations, and a decrease of 28 per cent in the assessment of the property of citizens generally.

[fol. 559] The several affidavits of citizens, tax assessors and county officials, were procured by the affiant by letter

addressed to a lawyer in each of the counties from which affidavits are filed, requesting that affidavits be procured showing in fact the ratio between assessments for taxation and actual values in such county. All affidavits furnished affiant pursuant to such request have been filed with the Commission, and no affidavit procured has been withheld. The Railway has recognized that a central assessing authority is essential to the proper valuation of railway properties for purposes of taxation. It is, however, an obvious fact that a centralized assessment of the property of a railway, based upon a finding of actual value, is grossly unjust, unfair and arbitrary in comparison with local assessments of the property of other taxpayers, unless the central authority recognizes its constitutional obligation and requirement that assessments shall be so made that "taxes shall be equal and uniform throughout the state," and that "No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of the same value."

Wm. H. Swiggart, For The Nashville, Chattanooga
& St. Louis Railway.

Sworn to and subscribed before me on this 30 day of
August, 1938. Wm. C. Crutchfield, Notary Public.
(Seal.) My Commission expires 1-5-1941.

[fol. 560]

EXHIBIT 1 TO AFFIDAVIT

Appendix to the Senate and House Journals,
1915 Legislature

Report of Committee to Investigate Assessment
and Taxation

To His Excellency, Governor Tom C. Rye, and to the Fifty-
ninth General Assembly of Tennessee.

This Committee, to investigate the question of Assessment and Taxation in the State, was appointed by the Governor in pursuance of Senate Joint Resolution No. 27, adopted on January 26, 1915, the text of which will be found in the Appendix to this report.

Making Reassessment Unnecessary

The two features of the present law which seem to give rise to most criticism are the inequalities in assessments and the practice of reassessment. We have come to the unanimous conclusion that the only means by which property may be equitably and adequately assessed is by securing such assessment at the beginning; and we are confident that through an improved system of making the original assessments, followed by proper equalization in the county where the assessments are made, and finally by the Tax Commission, the need of back assessments will be removed. We are recommending, therefore, that after payment of taxes the receipt shall be a finality. The State may lose a small sum by declining to reassess property, [fol. 561] but it now loses, we believe, much more because of the general unrest of taxpayers through the fear of back assessment, for it is a notorious fact that very little of the property of Tennessee of any class is now assessed at its actual cash value.

"Actual Cash Value"

Though no words in the assessment law are more frequently used than "actual cash value," nothing, in fact, is so rare as an actual-cash-value assessment. If any such are on the assessment rolls, it is through accident or mistake of the assessor. These officials freely admitted to this Committee that, despite their official oaths, taken not only before the beginning of their work, but after its completion, property, instead of being assessed as required by law, at its actual cash value, was assessed by them, in the case of individual properties, all the way from 10 to 80 per cent. In the case of whole counties there were frequent admissions by assessors and others that the tax aggregate did not constitute more than 25 per cent of the value of the property in the county, and in no case did any assessor state that the tax aggregate constituted more than 60 per cent of the value. One candid official, whose conscience had worried him somewhat at the wording of the oath, struck his pen through the word "cash" and returned his assessment as at the "actual tax value" of the property.

[fol. 562] Assessments Much Below Value

It is not surprising, therefore, that, despite the advances in the values of land all over the State, which are well known to all who have investigated the subject, the tax aggregate has grown very slowly, most of the increases, as shown, being in the assessments of city property. In fact, the Comptroller's report for 1914 shows that thirty-one counties reduced their average acreage assessment between 1913 and 1914, and that there were actually six counties which were assessed at less per acre on acreage property in 1914 than in 1879. In the ten years between 1904 and 1914 the total assessments of the State increased from \$429,767,706 to \$672,754,691, or 56.5 per cent. This is not an increase commensurate with the growth of wealth. According to the Federal census the capital invested in manufactures in Tennessee was \$63,141,000 in 1899 and \$167,924,000 in 1909—an increase of 166 per cent. The value of farm property in 1900 was \$341,202,025, and in 1910 it was \$612,520,836—an increase of 79 per cent. The average acreage assessment now is less than \$9.

These figures speak for themselves. Our property every year as assessed on a lower basis compared to value.

In addition, statements of assessors before this Committee show that in many cases throughout the State the bases of assessment in counties adjoining one another vary between 25 per cent and 60 per cent of the actual value of [fol. 563] the property in those counties. The game of dodging a fair share of State taxes is being played all over the State, just as most individuals dodge taxes in their individual assessments; and such a thing as actual-cash-value assessments in accordance with the assessment law of 1907 is practically in unknown anywhere. In fact, numerous assessors testified that they dared not assess property at its actual cash value; for, if they did, they were certain to lose their official positions at the next election—if, indeed, they were not before that time run out of the county. We are unable to furnish statistics as to the actual value of property in Tennessee as compared with the assessment, but from those collected by its agents the Federal Census Bureau estimates that the assessed value of property is about 38 per cent of the actual value of property in the State. We are inclined to the belief, however, from admissions made by assessors and taxpayers who have

come before this Committee, that this estimate is much too high.

Some Marked Inconsistencies

Differences in valuation of a marked nature exist in counties in the same grand division, and often between close neighbors. For instance, in Greene County the value of all farm property, as shown by the Federal census of 1910, is about five times as great as the assessment of acreage for [fol. 564] taxation, while in Campbell County the assessment was nearly as much as the value of the farm property. In Hamilton County the assessment was a little more than the value of the farm property, while in Knox County it was only one-half as much. In Cumberland County the assessment was about four-fifths the value of all farm property, while in White County it was only one-fourth as much. Sumner and Bedford showed about one-fourth; Benton, one-third; Davidson, one-half; Lake showed one-half; and Lauderdale, one-third. There probably are good explanations for some of these differences, but we believe a careful analysis of all these figures such as might be made by a permanent Tax Commission would be very useful in more nearly bringing about uniformity of assessment in proportion to value, and would put a stop to the very gross injustice that is now being practiced against those counties which, in reality, pay a part of the taxes of the counties that are underassessed.

4 In Larger Counties

In the larger counties, where assessors are more adequately paid and are better trained for their duties, and where they keep open office at the courthouse for the year around, assessments are more efficiently made. Furthermore, by reason of the increasing costs of city and county governments, powerful influences have been brought to bear on assessors in counties containing considerable [fol. 565] municipalities for higher assessments, and the result has been that these counties are assessed much more nearly at their true values than in those counties where no such influences are at work.

Nevertheless, even in the urban counties the law has not been as carefully followed as it would be if there were.

State supervision; and, undoubtedly, more adequate equalization of individual pieces of property is needed, as well as the discovery and placing on the tax books of large amounts of city property taxable under the law which now in great measure escapes. Indeed, any complete assessment of the State will bring much more property out of hiding in cities than elsewhere. . . .

In 1892 the percentage of our taxes collected from personal property was just about the same as it is today—13 per cent. . . .

The only true basis of assessments, in our opinion, is the actual cash value of property. This, of course, presupposes some market and a willingness of the owner to sell and the probable existence of a purchaser who would buy. It does not mean the assessment of property at inflated or fictitious values, but means the establishment of reasonable and well-sustained standards of value, considering income, increment, depreciation, possible use, etc. Such a system of [fol. 566] assessments, based on actual cash values, is, we believe, absolutely essential to equalization all over the State. Furthermore, when individual property everywhere in Tennessee has been brought by the assessors, working under the instructions and guidance of the Tax Commission, to a basis approximating cash values, and when the boards of equalization appointed by the Tax Commission, as provided under the law we recommend, shall have equalized this property, and when the Tax Commission itself has heard complaints and passed on them, it will then be possible for the central taxing body, through personal inspection or other investigation, to consider counties as a whole, and, in cases of grave inequality, remedy such by horizontal increases or reductions of assessment, so that the whole State may be placed on exactly the same footing. Any other method does not comply with the spirit of the Constitution. . . .

. . . But the \$1,000 exemption of personal property, while a justifiable aid to the small farmer, undoubtedly has proved the cloak for more evasion of taxes than any other

provision of our laws. In the cities millions of dollars of property, unquestionably, are withheld from taxation under the guise of this exemption. The assessor in the rural districts generally comes face to face with the owner of the classes of personal property which are found about a farm, and most of these are listed and the exemptions taken. In the cities property owners rarely fill out their schedules of [fol. 567] property, and the assessor is too busy to see the individual taxpayers; so that all personal property, in the form of household and kitchen furniture, vehicles, automobiles, jewelry, etc., largely escapes taxes. There are said to be 20,000 automobiles in the State of Tennessee, and our information is that not more than one per cent are returned for taxation. Also the assessor in the rural districts more often discovers the holders of notes, mortgages, etc. But in the cities the assessment of property of this class is more generally ignored. * * *

Equalization the Purpose

It will not, we feel sure, be the purpose of the Legislature to increase the burden of taxation, but rather to equalize it. But it is a fundamental axiom of taxation that a community or Commonwealth may collect a much larger fund for governmental purposes without unduly burdening the individual citizens, provided the taxes are apportioned equitably on all who are able to pay a portion of the cost of government. Ability to pay is the only true guide as to justice in taxation. * * *

Respectfully submitted, O. K. Holladay, Chairman;
A. R. Gholson, J. W. Vandey, Leo Goodman, Thad.
A. Cox, George F. Milton, Wallace McClure, Secretary.

Nashville, Tenn., March 8, 1915.

[fols. 568-569] AFFIDAVIT OF WM. R. POWDER

Wm. R. Powder, a citizen and resident of Nashville, Tennessee, makes oath as follows:

I am the Executive Secretary of the Tennessee Taxpayers Association, Inc., of which Mr. C. W. Bailey of

Clarksville, Tennessee, is the president. This organization was effected in 1932, as an association of citizens and taxpayers of Tennessee, having for their object the study and assembling of information with respect to the collection and expenditure of public revenue, and the making of recommendations based upon such information to the State of Tennessee and its several governmental sub-divisions, in order to aid in bringing about by non-partisan and non-political means the greatest possible economies, in the interest of all taxpayers alike, to the end that taxes throughout the state may be reduced wherever possible, consistently with the public interest.

Since its organization the Tennessee Taxpayers Association has maintained officers in the Chamber of Commerce Building in Nashville, Tennessee, and has maintained a staff of investigators and statisticians, engaged in the work of assembling accurate information as to the taxation customs and practices of the state and its various governmental subdivisions. It has rendered under contract, services to a number of counties of the state, presenting to the county officers detailed studies of the collection and expenditure of public revenues therein; as the result of all of which work its staff has acquired intimate knowledge of taxation and assessment practices and customs throughout the state.

The Tennessee Taxpayers Association has made a particular and especial study of the method and practices followed by the various governmental subdivisions of the state in the matter of the assessment of property for taxation. Mr. W. P. Brooks, Research Accountant for the Association, has been in direct charge of this work, and has personally visited all of the counties of the state, in a personal investigation of the ratio of assessments placed by county and city tax assessors on real and personal property for ad valorem taxation to the actual or cash value of such property.

The Tennessee Taxpayers Association has published two annual reports, based upon its statewide surveys, addressed to the Governor, Members of the Tennessee General Assembly, and to citizens and taxpayers of the State of Tennessee, presenting in as concise a manner as is consistent with accuracy the results of such surveys. Its latest report, dated April 1, 1938, contains a section dealing with the assessment of taxes, which is in words and figures as follows:

[fol. 571]

"ASSESSMENT OF TAXES

"Property tax is the principal source of income of each of the counties. This being true, an equitable, accurate and thorough assessment of property for taxation purposes is essential. But it is not present. The correctness of the assessment is of vital concern to the people in that it furnishes the basis for equitably distributing the tax burden and producing the principal revenues. It is of direct interest to the people that the assessments on which tax payments are based are equitable and accurate in order that no injustice be worked upon any person or other taxpayer.

The county is the unit which now controls the original assessment. The principal amount of valuation work is done by the county tax assessor. In the larger counties he is assisted by one or more deputies. The assessor is elected by the people and is required to make a biennial assessment of all real and personal property subject to the property tax, except that of (1) merchants who render to the county court clerk an annual sworn statement of their overage stocks of their merchandise and complement of fixtures and other equipment; and (2) the properties of the railroads, bus and truck lines, and other public utilities, which are assessed by the state railroad and public utilities commission. A county board of equalization passes on the tax assessor's valuations, particularly those which are made the subject of protest, and the state board of equalization has the power of final review.

In general, no scientific methods of assessment are employed in the assessment of property for taxation by the counties. Tax maps and other modern valuation devices are unknown outside a few counties. Necessarily, the assessor's interpretation of values is the basis of the whole system. In most counties, the county assessors use the 'ride by, squint and guess method.' In many instances assessments of former years are carried forward, sometimes with a flat percentage or other reduction being made. Many candidates for the position of county tax assessor openly conduct their campaigns for election and are elected upon a promise to reduce the assessed value of the voter's taxable property.

[fol. 572] Another factor entering into the assessment of property is that many of the counties have attempted through reductions of assessments to lower their contri-

bution to the state under its levy of 8¢ upon each \$100 of assessed valuation. This situation is further aggravated by the desire of the counties to obtain an increased share of school equalization funds from the state. This they can do and in some instances actually do, increasing the rate of the county tax levy for school purposes and reducing the assessed values of taxable properties, a practice which should be terminated.

The result of the valuation methods employed by county tax assessors has been a steady, and almost alarming decrease in assessed valuations since 1920 when all property was revalued for tax purposes. This decrease is reflected in the following table:

Tax Assessment Year	Farm Lands & Impts.	Town Property & Impts.	Personal Property	State's Total Assessed Value Excluding RR's and Utilities	Assessed Value Railroads and Utilities
1920	\$861,637,518	\$654,830,708	\$184,312,879	\$1,700,781,105	\$272,859,649
1925	606,416,719	651,063,357	163,443,708	1,420,923,784	272,124,248
1937	437,735,502	687,411,013	97,296,964	1,222,443,479	252,514,477
Inc. or Dec.	-49%	+5%	-47%	-28%	-7%

From this we see that the total assessed value of taxable property of the state (excluding railroads and public utilities, which are assessed by the state railroad and public utilities commission) showed a net decrease of 28 per cent during the 18-year period. Even this reveals further inconsistencies: Farm land values were reduced 49 per cent from 1920 to 1937; personal property was reduced 47 per cent during that period, while town property was increased 5 per cent. During the same period, the assessed value of railroads and utilities decreased only about 7 per cent. The market price of all classes of property has been affected [fol. 573] since 1930 by the economic depression. But it has been shown that the real relation between economic conditions and the basis for assessment for taxation in Tennessee is not accurately reflected by the varying and conflicting rates of reduction and increase employed by county tax assessors in valuing rural and urban property.

The relation between the real and the assessed value of taxable property also shows a wide variation as between county and county. Among the individual counties, the basis for assessed value ranges from a low of 25 per cent to a high of 75 per cent of estimated actual value, the average in the 1937 assessment being approximately 66 per cent. This variation, so long as the state uses the county's assessed value as a basis for levying the state property tax, works a wide and grossly unfair discrimination as between the taxpayers of one county and those of another.

One of the indirect results of these reductions in assessed values is, of course, collateral increases in tax rates. Such rate increases work to the disadvantage of the individual counties in which they are made in that, even when accompanied by a low valuation, a high tax rate discourages business and especially manufacturing concerns seeking locations within such counties. Since industry now looks more and more toward the South for plant locations, this matter of tax rates is becoming one of extreme importance (1) to the government itself in that such new business would increase the taxable resources of the county, and (2) to the people in that such new taxpayer would furnish increased employment and distribute the tax load over a wide base, and thus tend to reduce taxes for all existing taxpayers.

A uniform system of scientific and impartial valuation should be required by state law, and machinery should be

set up to insure such an assessment being made every two years by each county in the state. Such a plan will be found described on page 56. Meanwhile, the state should compel the use of a uniform valuation basis." (Pages 13-16.)

[fol. 574] The detailed tabulated statement for each county of the state upon which the foregoing section of the 1938 Annual Report is based is contained on pages 41-44 of said report, of which pages a true and exact copy is hereto attached as Exhibit "A" to this affidavit.

Affiant states that the statistics contained in said Exhibit "A" to this affidavit, and the statistics quoted and conclusions stated in the above quoted excerpt from the 1938 Annual Report of the Taxpayers Association, are true to the best of affiant's knowledge and belief. The statement of the ratio of assessed value to actual value of property in the several counties is based upon the best available information which the investigators of the Association could obtain by personal visits to each of the counties. Such information was gained direct from the county tax assessor whenever possible, and by personal conference with other county officers, and citizens who had knowledge not only of the custom of undervaluation for assessment purposes but of the value of property and its assessment in the county. In some instances the county assessor would not make a statement, apparently because of the statutory oath requiring assessments at actual cash value, but in all sections of the state it was found to be a matter of common and historical knowledge that real and [fol. 575] personal property was not, and had not ever been, assessed for ad valorem taxation at actual cash value; that in each county it was apparently thought to be necessary to undervalue the property located in the county in order that the property of such county would not be required to pay an excessive and inequitable portion of the tax levied by the state at a rate applicable in each county of the state; that while the present state tax rate is only eight (8) mills on the dollar, the practice and custom of underassessment was established in former years when the state tax rate was much higher. Affiant states that in many cases the local tax assessors justified their practice of underassessment by stating that they merely followed the practices established by their predecessors in office.

Affiant further states that the Tennessee Taxpayers As-

sociation has furnished information for some years to dealers in bonds issued by the several counties of the state, stating both the aggregate assessed value of real and personal property within the several counties, and the estimated actual value of such property; that in the main the estimated actual value so reported by the Association to bond dealers has borne the same relation to the aggregate assessed value as stated in the table herewith filed as Exhibit "A" to this affidavit. The several bond dealers, in [fol. 576] offering county securities to the public and to other dealers, have from time to time published the Association's computation and comparison of estimated actual value of property and assessed value for the several counties, and the bonds and securities of those counties have been bought and sold by dealers and by the public on the faith of the accuracy of such published estimate and computation. The affiant knows of no challenge ever having been made to the accuracy of the estimates furnished by the Taxpayers Association and published by the bond dealers, and to the best of his information and belief they are accepted by the public generally as nearly accurate as such estimates can be made.

(Sgd.) Wm. R. Ponder.

Sworn to and subscribed before me at Nashville, Tennessee on this 21 day of July, 1938. (Signed) Oscar L. Farris, Notary Public. Com. Expires April 4, 1939, Davidson County, Tenn. (Seal.)

Counties

Percentage of Actual Value Represented by Assessed Value of Taxable Property;
Per Capita Assessed Value; Tax Rates and Percentage of 1935
Property Tax Delinquent at Various Dates

[fol. 577]

State of Tennessee.

County	Assessed Value Per Cent of Actual	Per Capita Assessed Value 1937	County Rate 1937	1935 Property Tax Uncollected	
				Date	Per Cent
Anderson	60%	\$343.65	\$2.62	12-31-1936	10.2%
Bedford	50%	433.20	1.47	3-31-1937	9.9%
Benton	60%	274.47	1.95	Not available	
Bledsoe	50%	358.69	2.86	3-31-1937	22.0%
Blount	75%	521.16	1.97	6-30-1937	6.0%
Bradley	60%	454.01	2.23	12-31-1936	13.2%
Campbell	25%	215.77	4.08	12-31-1936	9.0%
Cannon	50%	308.33	1.90	3-31-1937	5.9%
Carroll	60%	315.14	1.95	6-30-1937	9.4%
Carter	30%	513.85	3.89	5-31-1937	35.5%
Cheatham	60%	362.75	1.92	9-30-1936	20.0%
Chester	60%	258.03	2.15	12-31-1936	23.8%
Claiborne	33-1/3%	199.80	3.47	12-31-1936	32.5%
Clay	50%	192.54	2.62	12-31-1936	14.2%
Coke	60%	336.54	2.52	6-30-1937	12.1%
Coffee	65%	276.11	1.70	3-31-1937	19.4%
Crockett	50%	322.15	1.77	10-31-1936	8.0%
Cumberland	50%	259.36	2.92	12-31-1936	37.0%
Davidson	70%	1,131.79	1.00	9-30-1937	4.8%
Decatur	50%	189.12	2.65	10-31-1936	50.0%
DeKalb	50%	190.72	1.92	3-31-1937	10.0%
Dickson	60%	273.23	2.29	9-30-1936	24.0%
Dyer	45%	383.33	2.52	3-31-1936	37.1%
Fayette	50%	363.70	2.32	11-30-1936	20.0%
Fentress	40%	233.92	3.67	12-31-1936	18.0%
Franklin	49%	434.80	1.57	3-31-1937	9.7%
Gibson	50%	339.16	2.30	10-31-1936	22.8%
Giles	60%	450.44	1.77	3-31-1937	1.6%
Grainger	60%	248.04	2.17	2-28-1937	16.0%
Greene	60%	457.69	2.27	3-31-1937	7.1%
Grundy	50%	229.20	2.75	3-31-1937	40.3%
Hamblen	60%	477.05	1.82	6-30-1937	7.8%
Hamilton	60%	855.32	1.76	5-31-1937	9.0%
Hancock	50%	193.17	1.92	3-31-1937	17.0%
Hardeman	65%	288.74	3.07	11-30-1936	21.0%
Hardin	65%	217.42	2.27	12-31-1936	25.6%
[fol. 578]					
Hawkins	33-1/3%	271.84	1.82	3-31-1937	10.7%
Haywood	50%	286.49	2.01	11-30-1936	17.6%
Henderson	40%	210.54	2.92	9-30-1936	24.5%
Henry	60%	374.72	2.24	9-30-1936	19.2%
Hickman	60%	345.88	2.12	9-30-1936	25.5%
Houston	60%	363.66	1.90	9-30-1936	20.0%
Humphreys	60%	481.17	1.90	9-30-1936	20.0%
Jackson	50%	173.64	2.50	12-31-1936	8.0%
Jefferson	60%	420.63	2.42	12-31-1936	18.0%
Johnson	33-1/3%	143.75	3.22	6-30-1937	19.6%
Knox	60%	805.41	1.46	6-30-1937	12.3%
Lake	70%	486.77	1.74	10-31-1936	25.0%
Lauderdale	50%	385.40	2.50	11-30-1936	16.0%
Lawrence	60%	325.15	2.22	3-31-1937	22.4%
Lewis	60%	337.62	2.28	8-31-1936	20.6%
Lincoln	75%	401.56	1.76	3-31-1937	18.4%

Counties

Percentage of Actual Value Represented by Assessed Value of Taxable Property;
Per Capita Assessed Value, Tax Rates and Percentage of 1935
Property Tax Delinquent at Various Dates

State of Tennessee

County	Assessed Value Per Cent of Actual	Per Capita Assessed Value 1937.	County Rate 1937	1935 Property Tax Uncollected	
				Date	Per Cent
Loudon.....	60%	366 22	1 87	6-30-1937	12.7%
Macon.....	75%	219 73	1 52	9-30-1936	15.0%
Madison.....	65%	495 40	2 50	9-30-1936	25.5%
Marion.....	50%	553 43	2 17	12-31-1936	7.0%
Marshall.....	60%	507 96	2 07	3-22-1937	3.4%
Maury.....	60%	528 16	1 44	3-31-1937	6.2%
McMinn.....	50%	295 82	3 42	3-31-1937	13.8%
McNairy.....	65%	215 02	2 85	3-31-1937	33.0%
Meigs.....	40%	190 32	2 65	3-31-1937	24.0%
Monroe.....	60%	335 64	2 67	6-30-1937	8.3%
Montgomery.....	60%	440 22	1 72	9-30-1936	15.3%
Moore.....	65%	275 98	1 97	12-31-1936	
Morgan.....	70%	336 14	3 02	12-31-1936	23.3%
Obion.....	75%	493 35	1 74	12-31-1936	18.9%
Overton.....	50%	142 49	2 45	12-31-1936	41.0%
Perry.....	40%	398 45	1 65	9-30-1936	18.8%
Pickett.....	50%	158 81	2 68	12-31-1936	24.2%
Polk.....	50%	888 02	1 82	6-30-1937	2.8%
Putnam.....	50%	264 59	2 32	6-30-1937	26.5%
[fol. 579]					
Rhea.....	50%	409 05	2 79	9-30-1936	23.2%
Roane.....	60%	376 70	3 01	12-31-1936	20.0%
Robertson.....	60%	479 43	1 64	9-30-1936	17.5%
Rutherford.....	60%	313 16	1 61	Not available	
Scott.....	50%	302 07	3 12	12-31-1936	10.1%
Sequatchie.....	50%	410 38	1 77	3-31-1937	30.0%
Sevier.....	60%	182 31	3 17	6-30-1937	14.8%
Shelby.....	75%	984 82	88	5-31-1937	16.0%
Smith.....	50%	419 30	1 55	4-13-1937	4.7%
Stewart.....	60%	172 48	2 15	9-30-1936	18.0%
Sullivan.....	33-1/3%	525 62	1 92	6-30-1937	7.0%
Sumner.....	60%	465 69	1 58	9-30-1936	14.0%
Tipton.....	50%	328 71	2 67	11-30-1936	19.0%
Trousdale.....	60%	451 70	1 70	9-30-1936	15.0%
Unicoi.....	35%	308 20	3 40	6-30-1937	13.0%
Union.....	25%	117 42	2 22	12-31-1936	3.4%
Van Buren.....	50%	336 64	1 47	3-31-1937	31.3%
Warren.....	70%	328 72	1 42	3-31-1937	7.0%
Washington.....	50%	452 08	1 90	5-31-1937	13.7%
Wayne.....	60%	203 52	2 42	12-31-1936	20.0%
Weakley.....	60%	377 78	1 80	Not available	
White.....	60%	308 87	2 35	3-31-1937	10.1%
Williamson.....	65%	683 30	1 39	9-30-1936	12.7%
Wilson.....	60%	551 03	1 17	9-30-1936	35.0%

[fol. 580] In 1936-37 the ratio of the value assessed for taxation to estimated actual value ranges between a low of 25 per cent and a high of 75 per cent, the average for all 95 counties, as stated above, being 61.5 per cent. The percentages used in this statement are based upon estimates made by county officials.

Tax Aggregate 1937

Exhibit D, pages 46 to 49, shows the assessed valuation of the taxable property within each county. This is shown in groups classified according to types of property. This indicates that the total assessed valuation of all taxable property was \$1,474,957,956 which is made up of the following:

	Assessed Value	Per Cent
Acreage, rural property	\$ 437,735,502	29.7%
Lots, urban property	687,411,013	46.5%
Personalty	97,296,964	6.6%
Public Utilities	252,514,477	17.1%
Total	\$1,474,957,956	100.0%

For the individual counties, the assessed valuation ranged in amounts from a low of \$891,768 in Pickett County to a high of \$301,831,022 in Shelby County.

This aggregate is subject to correction for at least one County. Up to March 21, 1938, the state department of finance and taxation has received four widely differing statements from Carter County, and had not determined which was correct.

Comparison of County Tax Rates for 9 Years, 1929-1937

Exhibit E, pages 49 to 52, shows a comparison of county tax rates for the years 1929 through 1937. It shows that the average tax rate for all counties, beginning with \$2.00 (on each \$100.00 of assessed valuation) in 1929, decreased successively to \$1.99 in 1930 and 1931, to a low of \$1.80 in 1932. The average . . .

[fol. 581] AFFIDAVIT OF WILLIAM P. BROOKS

I, William P. Brooks, am now and have been since October 1932, employed by Tennessee Taxpayers Association as Research Accountant. In that capacity I have conducted financial and factual surveys of the government of the State of Tennessee and of twenty-three of the individual counties of the State of Tennessee.

The work of conducting the surveys of the counties has brought me in close contact with the methods employed

by the various counties in the assessment of real and personal property for taxation.

In addition, in 1936, 1937 and 1938, I have conducted the work in two factual annual surveys of the counties and cities and towns in the State of Tennessee. In each of these annual surveys I personally performed approximately fifty per cent of the field work necessary to gather the information and, incident thereto, I have visited and personally contacted the officials of each county and each city and two in the State of Tennessee.

These statewide surveys included among other things an ascertainment of the ratio of assessed value of taxable property for the taxation to the estimated actual value of such property in each of the several counties of the State of Tennessee. Statements of these ratios are set out in the report of "County, City and Town Government in Tennessee," dated April 1, 1938 and published by Tennessee Tax-[fol. 582] payers Association. The statements respecting the percentages of actual value represented by the assessed value are set out on pages 41, 42, 43 and 44 of said report.

The ratios of assessed value of taxable property for taxation to the estimated actual value as set out in the above mentioned report are based upon estimates and statements of local officials in each county. These estimates, in my opinion, represent the best information available on the subject. To the best of my knowledge and belief these ratios are correct and represent results of assessments actually made in the various counties.

(Sgd.) William P. Brooks, Research Accountant,
Tennessee Taxpayers Association.

Subscribed and sworn to before me, Oscar L. Farris, on this 20 day of July 1938.

(Sgd.) Oscar L. Farris, Notary Public.

(Seal) (Oscar L. Farris, Notary Public, Davidson Co., Tenn.) My com. expires April 4, 1939.

[fol. 583]

AFFIDAVIT OF T. H. MITCHELL

STATE OF TENNESSEE,

County of Davidson:

T. H. Mitchell, : citizen and resident of Nashville, Tennessee, makes oath as follows:

I am President of the Cumberland Securities Corporation, located at 400 Union Street in the City of Nashville, Tennessee. Cumberland Securities Corporation, Inc., deals extensively in securities issued by the State of Tennessee and its several counties and municipalities. As such dealer it is necessary, for our own advice and information, and in order that we may furnish to our customers accurate information with respect to the underlying value of the county and municipal securities which we offer for sale, that we inform ourselves as accurately as possible with respect to the value of the property which stands as security for county and municipal bond issues. To this end Cumberland Securities Corporation, along with other dealers in Tennessee municipal securities, makes use of the facilities for gathering information developed by the Tennessee Taxpayers Association.

Attached to and made a part of this affidavit are some thirty (30) or more offering sheets, describing in detail various county bond issues, published for the most part by Cumberland Securities Corporation. These sheets are published for the information of our customers and the information and statements of fact therein contained, while not guaranteed by us, represent the most accurate information [fol. 584] which we are able to secure at the time of publication. The statements in said sheets of estimated actual value of property in the several counties are based upon reports made to us by the Tennessee Taxpayers Association, which show that as a general average property is assessed in the counties of Tennessee at approximately 66 per cent of the actual value of such property. The securities issued by the several counties are bought and sold and are generally dealt in by the public on the faith of the truth of the statements made in the offering sheets as attached to this affidavit, and we have never at any time known any of the statements on said sheets, comparing actual value with assessed value, to be successfully challenged. It is a matter of common knowledge throughout

the state, and particularly among that part of the public interested in and dealing in county securities, that the assessments placed upon property for ad valorem taxation will average not more than 66 per cent of the actual value of such property.

(Signed) T. H. Mitchell.

Subscribed and sworn to before me at Nashville, Tennessee, on this 20th day of July, 1938. (Signed) Dorothy Walton, Notary Public. Commission expires 7/9/39. (Seal.)

[fol. 585]

An analysis of the bond offering sheets attached to the affidavit shows the following:

County	Date	Assessed Value	Actual Value
Benton	1935	\$3,073,856.00	\$5,111,113.00
Chester	1936	2,748,100.00	4,508,260.00
Claiborne		7,170,041.00	12,000,000.00
Crockett	1935-50%	5,607,359.00	11,214,718.00
Cumberland	1937	3,046,442.00	7,616,105.00
Dickson	1934	5,058,060.45	12,000,000.00
Dyer	1937	12,048,322.00	26,774,048.00
Gibson	1937-50%	15,844,550.00	31,687,100.00
Grundy	1935-50%	2,544,307.00	5,088,614.00
Hamblen	1935	7,868,848.00	13,114,746.00
Hamilton	1937	136,916,762.00	225,000,000.00
Hardeman	1936-45%	6,528,951.20	14,750,000.00
Hardin	1936	3,428,343.00	5,499,835.00
Hawkins	1936	6,589,803.00	15,000,000.00
Henderson	1935-40%	3,736,328.00	9,340,821.00
Henry	1935-60%	9,730,046.00	16,216,740.00
Hickman	1934-60%	4,868,450.00	8,114,080.00
Knox	1936	124,234,167.00	200,000,000.00
Lake	1934	4,638,585.00	7,700,000.00
Lauderdale	1936	7,388,106.00	20,000,000.00
Lewis	1934	1,840,000.00	2,630,000.00
Madison	1935-65%	25,093,107.00	38,604,780.00
McMinn	1936	8,475,286.50	17,000,000.00
McNairy	1935-65%	4,425,458.00	6,808,397.00
Overton	1936	2,648,827.00	5,371,460.00

[fol. 586]

Polk	1937	13,929,406.00	27,928,316.00
Putnam	1935	6,354,944.00	12,000,000.00
Roane	1935	9,535,416.00	15,892,360.00
Scott	1937-50%	4,305,136.00	8,610,272.00
Sullivan	1934	25,526,620.00	75,000,000.00
Tipton	1935-50%	8,990,420.00	17,980,840.00
Washington	1936	20,872,259.00	41,744,518.00
Wilson	1937	13,174,718.00	21,000,000.00

[fol. 587] **Affidavits From Various Counties**: **BEDFORD COUNTY**

		Ratio of Assessed Value to Actual Value
John S. Hart, County Tax Assessor	Real Estate	50%
D. L. Jacobs, County Trustee	Of 1936 taxes of 140,308.74, only 124,365.91 has been collected. Negligible percentage of personal property has been assessed.	
Sam W. Bobo, Attorney, former City Attorney and 1936 Delinquent Tax Attorney	Real Estate	50%
J. E. Huffman, President, First National Bank and large property owner	Real estate Negligible amount of personal property assessed.	50%
Warren S. Yell, Real Estate Agent	Real estate Very few personal property assessments.	50%
A. L. Landers, Real Estate Agent	Real estate Very little personal property assessed.	50%

[fol. 588]

BEDFORD COUNTY**AFFIDAVIT OF JOHN S. HART**

Personally appeared before me, Ben Kingree, Jr., a Notary Public in and for said County and State, the within named John S. Hart, who, being first duly sworn, deposes and states:

I

That he is now the Tax Assessor for Bedford County, Tennessee, and has held such office since September 1, 1934.

II

That at the time of his taking office of Tax Collector he advised with his predecessor in office, Leland D. Jordan, who is now Post-Master at Shelbyville, Tennessee, in regard to the custom and practice of assessing real estate for tax purposes in said County. He was advised by his predecessor that the practice has been for a number of years to assess property for tax purposes at approximately fifty (50%) per-cent of its actual, or sale value. The assessments made by his predecessor in his office are, in the opinion of affiant,

about fifty (50%) per-cent of the actual, or sale value of the real estate so assessed, and during the tenure of office of this affiant, the assessments have remained the same, and have been made by affiant at approximately fifty (50%) per-cent of the actual, or sale value of the property, with the [fol. 589] exception of some few changes made by the County Equalization Board, with the general trend of such changes by such Board toward a decreased assessment, rather than an increased assessment in taxation.

III

In the opinion of the undersigned, property assessed for taxation in Bedford County is fixed in the amount of approximately fifty (50%) per-cent of its actual, or sale value, in order to carry out the principle that taxes shall be equal and uniform throughout the State, and to protect taxpayers of this County from low assessments in other Counties, and with this idea in mind, affiant, as well as affiant's predecessors in office, have resorted to comparatively low valuations and assessments.

(Sgd.) Jno. S. Hart, Tax Assessor.

Sworn to and subscribed before me, this the 7th day of July, 1938. (Sgd. Ben Kingree, Jr., Notary Public. (Seal Ben Kingree, Jr., Notary Public, Bedford Co., Tenn.) Commission expires July 9, 1940.

[fol. 590]

BEDFORD COUNTY

AFFIDAVIT OF D. L. JACOBS

Personally appeared before me, Ben Kingree, Jr., a Notary Public in and for said county and state, the within named D. L. Jacobs, who being first duly sworn, deposes and states:

I

That he is now the Trustee for Bedford County, Tennessee, and has held such office since September 1, 1936.

II

That during the years, 1936, the tax rate fixed for said county was \$1.55 on each one hundred dollars of the assessed valuation of property in said county, and during said year my records disclose the following:

Total amount of taxes levied (exclusive of utilities)	\$118,953.23
Amount of taxes levied on utilities	21,355.74
Total	\$140,308.97
Total amount of taxes collected by me (exclusive of utilities)	\$103,455.46
Total amount of taxes collected by me from utilities	20,910.45
Total	\$124,365.91

III

That there is only a very negligible percentage of the personal property in said county assessed for taxes, in fact, [fol. 591] so small that it would be impossible to estimate the percentage.

(Sgd:) D. L. Jacobs, Trustee.

Sworn to and subscribed before me this 7th day of July, 1938. (Sgd.) Ben Kingree, Jr., Notary Public. Commission expires July 9, 1940. (Seal Ben Kingree, Jr., Notary Public, Bedford Co., Tenn.)

[fol. 592]

BEDFORD COUNTY

AFFIDAVIT OF SAM W. BOBO

Personally appeared before me, Ben Kingree, Jr., a Notary Public in and for said county and state, the within named Sam W. Bobo, who being first duly sworn, deposes and states:

I

That he is now a practicing attorney at the Shelbyville bar, Bedford County, Tennessee, and was City Attorney for a period of two years, 1935-1937.

While City Attorney affiant became reasonably familiar with the amounts of assessments of property in the City for tax purposes, which assessments are fixed by and governed by the assessments made by the County Tax Assessor.

Affiant also was the delinquent tax attorney for Bedford County for year, 1936, and as such filed the delinquent tax bill in the Chancery Court at Shelbyville, Tennessee.

Also affiant is a property owner in Bedford County, and

has had occasion to observe property bought and sold in said county.

In the opinion of affiant real estate in Bedford County, Tennessee, is assessed by the County Tax Assessor at approximately 50% of its actual or sale value, and it is generally accepted by property owners that assessments are made on approximately the basis of 50% of its actual value.

(Sgd.) Sam W. Bobo.

Sworn to and subscribed before me this 7th day of July, 1938. (Sgd.) Ben Kingree, Jr., Notary Public [fol. 593] lic. Commission expires July 9th, 1940. (Seal Ben Kingree, Jr., Notary Public, Bedford Co., Tenn.)

[fol. 594]

BEDFORD COUNTY

AFFIDAVIT OF J. E. HUFFMAN

Personally appeared before me, Ben Kingree, Jr., a Notary Public in and for said county and state, the within named J. E. Huffman, who being first duly sworn, deposes and states:

I

That he is President of the First National Bank of Shelbyville, Tennessee, and by virtue of his position necessarily deals with a large amount of real estate and personal property in Bedford County, Tennessee. Affiant also now owns a considerable amount of both real estate and personal property in Bedford County, and has bought and sold the same for a number of years, as a result of which he is reasonably familiar with real estate values and values of personal property in said county.

II

That real estate in said county is assessed by the County Tax Assessor at approximately 50% of its actual or sale value, and this assessment on the basis of a fixed percentage of actual value is generally accepted to be fixed by all property owners in order that all taxes may be equal and uniform.

III

That only a very negligible percentage of the personal property located in said county is assessed for tax purposes, and in fact such a small percentage that any estimate made [fol. 595] by affiant would be inaccurate.

(Sgd.) J. E. Huffman.

Sworn to and subscribed before me, this 7th day of July, 1938. (Sgd.) Ben Kingree, Jr., Notary Public. Commission expires July 9th, 1940. (Seal Ben Kingree, Jr., Notary Public, Bedford Co., Tenn.)

[fol. 596]

BEDFORD COUNTY

AFFIDAVIT OF WARREN S. YELL

Personally appeared before me, Ben Kingree, Jr., a Notary Public in and for said county and state, the within named Warren S. Yell, who being first duly sworn, deposes and states:

I

That he is a resident citizen of Bedford County, Tennessee, and has resided in said county for a number of years, and is now engaged as an independent real estate agent, buying, selling and renting of real estate throughout the country.

II

That he is reasonably familiar with real estate values in Bedford County, Tennessee, and with the amounts of assessments thereon for tax purposes. In the opinion of affiant property in said county is assessed by the County Tax Assessor at approximately 50% of its actual or sale value, so that there may be no discrimination in the taxation of property as a result in inequality in assessments.

III

That a very small percentage of the personal property in said county is assessed for taxes, and in fact; very few individuals are assessed upon the personal property owned [fol. 597] by them.

(Sgd.) W. S. Yell.

Sworn to and subscribed before me, this July 7th, 1938. (Sgd.) Ben Kingree, Jr., Notary Public. Commission expires July 9th, 1940. (Seal Ben Kingree, Jr., Notary Public, Bedford Co., Tenn.)

[fol. 598]

BEDFORD COUNTY

AFFIDAVIT OF A. L. LANDERS

Personally appeared before me, Ben Kingree, Jr., a Notary Public in and for said county and state, the within named A. L. Landers, who being first duly sworn, deposes and states:

I

That he is a resident citizen and property owner in Bedford County, Tennessee, and is now engaged in the business of buying and selling of real estate throughout said county.

II

That he is reasonably familiar with the values of real estate in said county as well as the amounts of the assessments made on properties by the County Tax Assessor, which in the opinion of affiant is based on a fixed percentage of approximately 50% of its actual or sale value.

Affiant further states that there is very little personal property assessed for tax purposes in said county, and in fact, such a small percentage, that it would be impossible to estimate the amount.

(Sgd.) A. L. Landers.

Sworn to and subscribed before me, this July 7th, 1940. (Sgd.) Ben Kingree, Jr., Notary Public.
(Seal Ben Kingree, Jr., Notary Public, Bedford Co., Tenn.)

[fol. 599]

BENTON COUNTY

Ratio of
Assessed Value
of Actual Value

G. B. Holladay,
Real Estate Agent

Real estate
Only small percentage personal property is assessed.
Of 1936 land and personal taxes of 51,447.58, on July 5, 1938 uncollected \$9,086.12 or 17.4%.

50%

Ira L. Presson,
Former J. P., Postmaster at Camden, for 20 years real estate agent, loan appraiser

Real estate
List of sales in 1937-38 showing assessed value 54% of sale price, many sales being for liquidation of mortgage acct.

50%

M. F. Henry,
County Trustee, former Tax Assessor, and Member Quarterly County Court

Land
Personality assessment negligible, only small percent of actual value.

60%

[fol. 600]

BENTON COUNTY

AFFIDAVIT OF G. B. HOLLADAY

Personally appeared before the undersigned authority, G. B. Holladay, with whom I am personally acquainted and who being duly sworn states:

That he was born, reared and has always resided in said county and is sixty-five (65) years of age.

That he has large property interest in said county and is familiar with land values and tax-assessments therein.

That he has dealt exclusively in real-estate personally and as real estate agent; that he has had the experience from 1919-1927 of valuing several millions of dollars of land for the Louisville and Nashville Railroad Company, the Nashville, Chattanooga and St. Louis Railway and the Tennessee Central Railway Company under the Federal Valuation Acts.

That the assessed value of the lands of Benton County as a whole will not exceed 50% of the actual and real value thereof.

That the personalty assessment of said county has been for years and is now negligible, only a small percentage of its actual value.

He further states that these facts are well known to the well informed citizenship of said county.

The tax aggregate of said county for the year 1936 was as follows:

Utilities	\$14,784.32
Land & Personalty	51,447.58
Total	\$66,231.90

[fol. 601] On July 5, 1938 there remained uncollected, for said year 1936, land and personal taxes, in the Chancery Court, \$9,086.12.

This is 17 4/10% uncollected for said year.

(Sgd.) G. B. Holladay.

Sworn to and subscribed before me this the 7th day of July, 1938. (Sgd.) Rhea Pendleton, Notary Public. My commission expires October 13, 1940. (Seal Rhea Pendleton, Notary Public, Benton County, Tennessee.)

AFFIDAVIT OF IRA L. PRESSON

Personally appeared before me, the undersigned authority, Ira L. Presson and made oath in due form of law, as follows:

That he was born, reared and has lived all his life in Benton County and he is now 55 years of age.

For five years he was a Justice of the Peace in Benton County and served as Post Master at Camden for five years.

He has been engaged in the real estate business for about twenty (20) years, a part of which time he was local agent of the Southern Trust Company, Clarkesville, Tennessee, in loaning money on farms in Benton county and another part of the time he represented the Federal Land Bank of Louisville, the Federal Land Bank Commissioner and other Federal Loan Departments in loaning money on farms and other lands in Benton county and has sold a considerable number of farms in Benton county as a real estate agent and as representative of the foregoing concerns, and therefore is familiar with the lands of Benton county and the value thereof.

That from his knowledge of the value of the land in Benton county, obtained from his experience in loaning money and selling lands, as hereinbefore stated, he is satisfied that the land in Benton county is not assessed for taxes at more than fifty (50%) per cent of its actual market value.

That recently he has made a careful search of the records in the Courthouse in Camden, in the County Register and [fol. 603] Trustee's offices, and from the information there obtained, supplemented with his private records of sales, made during the years 1937-1938, affiant states that the present assessment of real estate in said county was found to be fifty four (54%) per cent of the market value of the farms, lots and parcels of land sold and transferred by the owners to whom the property was assessed for taxes.

Affiant further states that thirty two (32) transfers of land taken at random over the county, as shown by deeds recorded, in which the consideration was shown, shows that said thirty two tracts of land sold for a total sum of fifty three thousand, fifteen (\$53,015.00) dollars; that the assessed value of the same lands, as shown by the tax books in the County Trustee's office amounted to the total sum

of twenty eight thousand, six hundred and seventy (28,670.00) dollars, about fifty four (54%) per cent of the market or sale value thereof.

A great many of these sales were made by the Federal Land Bank and other agencies who had purchased at foreclosure sales and who wanted to get their money back and were sold by affiant and other agents, who insisted that the lands be sold at the prices stated, in order that we could get our commissions on the sales, and the lands thus sold were real bargains and in almost every instance the lands were sold for less than the real or actual value of the farms so sold. In a number of instances the vendor had a mortgage on his land, was unable to meet his payments and in order to protect himself by realizing a part of his equity in the land sold for less than the real value, collecting a [fol. 604] part of the consideration and the purchaser assuming the mortgage debt.

Affiant further states that he has interviewed a number of parties, whose knowledge and information he values, all of whom have stated that according to their best information, knowledge and belief, the present market value of lands sold recently is more than fifty (50%) per cent above the present assessed value as shown in the County Register's office.

Affiant attaches hereto, marked exhibit A, and thus made a part of this affidavit a statement showing a number of conveyances, the consideration in each and the assessed value of each, that affiant personally took from the records in the Register and Trustee's offices of said county.

The loan agencies herein before mentioned undertook to loan about fifty per cent of the appraised value of the lands accepted as security, and frequently, the lands were appraised at a value twice the assessed value and loans made on the appraised value, the appraisers assuming that the lands in said county were assessed at about fifty per cent of its value.

(Sgd.) Ira L. Presson.

Sworn to and subscribed before me, this the 12th day of July 1938. (Sgd.) J. C. Parker, Notary Public.
My com. expires Jan. 14, 1940. (Seal J. C. Parker, Notary Public, Benton County, Tenn.)

[fol. 605]

(EXHIBIT "A")

The following is a list of conveyances as shown on records in the Register's office of Benton county, with the district in which land conveyed is located, date of conveyance, number of acres, names of grantor and grantee, the consideration stated in the deed and the assessed value of the land in the trustee's office, prepared by Ira L. Presson.

Dist.	Date	Acres	Grantor	Grantee	Sale Price	Ass'd Value
10	5-21-38	9.5	Fed. Land Bank	F. Hollingsworth	\$500.00	\$200.00
10	5-21-38	3	"	J. M. Smythe	100.00	100.00
10	5-21-38	38	"	Horace Melton	1000.00	700.00
11	5-21-38	175	"	Paul Wills	2500.00	1500.00
3	1-17-38	64	"	Albert Douglas	400.00	160.00
2	11-23-37	110	"	J. C. Durdin	2250.00	1500.00
1	12-2-37	180	"	E. B. Belisle	1250.00	900.00
3	5-17-37	205	"	Mrs. M. Hardin	3000.00	3300.00
3	5-17-37	157	"	"	1500.00	
2	5-1-38	97	"	Noah Prince	1800.00	1500.00
12	7-27-37	100	E. H. Baker	Paul Wills	954.00	220.00
2	8-30-37	38	J. W. Ellis	U. S. Govt.	136.00	50.00
14	8-30-37	176	J. F. Smothers	"	1170.00	550.00
2	8-21-37	146	W. G. Robinson	C. N. Frazier	1000.00	450.00
4	8-30-37	288	J. Anderson	U. S. Govt.	1082.00	750.00
2	9-20-37	200	T. F. Fisher	M. M. Sanders	825.00	810.00
12	9-22-37	110	Tenn. F. Corp.	O. Seiber	1500.00	1200.00
5	9-28-37	106	Beasley	Presson	900.00	700.00
4	11-8-37	78	Geo. Webb	U. S. Govt.	400.00	250.00
16	10-26-37	95	Tenn. Farm Corp.	"	3500.00	1600.00
3	12-11-37	175	Douglas	McDaniel	500.00	380.00
4	4-3-37	41	Fed. Land Bank	B. H. Norwood	325.00	
4	4-3-37	175	"	A. Brackins	700.00	600.00
5	1-20-38	135	Bridges	Wilford	1080.00	900.00
2	3-8-38	73	Co. Lynch	C. S. Earp	1160.00	800.00
10	1-1-38	188	Blanchard	Eavidson	1000.00	680.00
16	3-9-38	65	Price	Benson	1000.00	540.00
10	3-18-38	59	Thomas	Cuff	500.00	380.00
7	5-24-38	39	Robinson	Wills	650.00	450.00
10	5-9-38	84	Eli Mills	Dr. Newton	820.00	
7	5-1-38	95	Wilson	Wills	1500.00	900.00
7	5-6-38	102	F. Farmer	Dr. Newton	1300.00	700.00
16	Jun '37	345	Christopher	Dr. Newton	5800.00	1620.00
16	Jun '37	57	Nance	J. B. Benson	1300.00	800.00
16	Jun '37	39	Allen	J. B. Benson	1500.00	750.00
46	Jun '37	198	J. F. Lindsey	J. B. Benson	2000.00	1600.00
5	Oct '37	Lot	Lashlees	U. S. Govt.	7000.00	1760.00

[fol. 606]

BENTON COUNTY

AFFIDAVIT OF M. F. HENRY

Personally appeared before me the undersigned authority, M. F. Henry and made oath in due form of law:

That he was born and reared in Benton county, Tennessee and has been a member of the Quarterly County Court, tax assessor and is now County Trustee of said

county: having been elected Trustee in August 1936 and inducted into office about September 1st, 1936.

That he is acquainted with the land and land values in all parts of Benton county, Tennessee, and as County Trustee is acquainted with the assessed value of the lands throughout the county.

That the assessed value of the lands of Benton county as a whole will not exceed sixty per centum of the actual and real value thereof.

That it is a matter of common or general knowledge that real estate in the State is assessed far below its actual value and for that reason, so as to be in line with other counties the lands in Benton county are not now and have not for a number of years been assessed at more than sixty per centum of the actual value thereof; there are some small homes and farms assessed at something near its actual value, but the larger, better and more valuable homes and farms are assessed at not more than half the real value thereof, hence as a whole the assessed value will not exceed sixty per centum of the actual and real value thereof.

[fol. 607] That the personalty assessment in said county has been for years and is now negligible, only a small percentage of its actual value, when assessed at all.

The foregoing facts are well known and common knowledge to the well informed citizens of the county.

(Sgd.) M. F. Henry.

Sworn and subscribed before me, this July 16, 1938,

(Sgd.) Walter Cantrell, County Court Clerk,

(Seal Benton County, State of Tennessee.)

[fol. 608]

CARROLL COUNTY

		Ratio of Assessed Value to Actual Value
J. W. Jarrett, County Court Clerk for 12 years and County Judge for 2 years.	Real & personal	60%
J. W. Williams, County Court Clerk 12 years	Real and personal	60%
J. R. Boyd, Tax Assessor, 2nd District.	Farm lands	60%
	Town lots	50%
	Personal property	40%
J. W. Hickerson, Farm-land assessor, Federal Land Bank	Farm lands about	75%
Ered Tate, Abstractor and real estate agent	Town lots not that high	
	Personal property don't know.	
	Real estate between	60% and 70%

CARROLL COUNTY

AFFIDAVIT OF J. W. JARRETT

Personally appeared before me John T. Peeler, a Notary Public in and for Carroll County, Tennessee, J. W. Jarrett, who makes oath in due form of law and says:

I have heretofore served Carroli County as Clerk of the County Court for Twelve (12) years, I have served Carroll County as County Judge for two (2) years. During the time I was County Court Clerk I made out the tax books, after receiving them from the County Equalization Board, and I give below the following statistics for the years 1933, 1934, 1935, 1936 and 1937.

In the year 1933 town lots in Carroll County assessed for taxes were 2,692 lots and assessed for \$1,675,425.00, for the same year the number of acres assessed were 360,447 and assessed for taxes at \$4,608,075.00. That the personal property assessed for that year was \$157,350.00, the total assessment was \$6,440,850.00, with a tax rate of \$1.93 for county and eight (8) cents for schools, making a total of \$2.01.

That for the year 1934 there were 2,686 town lots assessed at \$1,850,675.00. There were 361,427 acres assessed at \$4,439,975.00. Personal property \$139,925.00, total assessment \$6,430,575.00, county rate \$1.93, State \$0.08, making a total of \$2.01.

That for the year 1935 there were 2,660 town lots assessed \$1,872,950.00. Acres 359,853 assessed \$4,389,925.00. Personal property \$174,425.00. Total assessment \$6,437,300.00. Rate, County \$1.93, State \$0.08, total \$2.01.

For the year 1936, 2,625 town lots assessed \$1,900,300.00. Acres 361,491 assessed \$4,356,175.00. Personal property \$169,225.00 total assessment \$6,425,700.00. Rate, County \$1.93, State \$0.08, total \$2.01.

For the year 1937, town lots 2,634, assessed \$1,879,850.00. Acres 360,050, assessed \$4,293,575.00. Personal property \$169,700.00, total assessment \$6,343,125.00. Rate, County \$2.03, state \$0.08, total \$2.11.

In order to make some comparisons as to values and assessments I have examined the Register's books in the Register's Office and the tax books in the County Trustee's Office and have found the following results:

For the year 1933 the tract of land was sold consisting of 260 acres for \$800.00, assessed at \$600.00, a tract of land

consisting of 87 acres for \$3,500.00 that was assessed at \$2,500.00.

In 1934 a tract of land consisting of 103 acres sold — \$3,500.00 assessed for \$3,000.00. A tract of land of 60 acres sold \$3,500.00 and assessed for \$1,600.00. In 1935 a tract of land consisting of 25 acres sold for \$800.00 and assessed at \$800.00. A tract of land of 27 acres sold for \$395.00 and assessed at \$200.00.

[fol. 611] In 1936 a tract of land consisting of 12 acres sold for \$550.00 assessed at \$200.00. A tract of land of $9\frac{1}{2}$ acres sold for \$1,730.00 assessed for \$1,500.00.

In 1937 a tract of land consisting of 50 acres sold \$2,100.00 assessed for \$1,600.00. A tract of land of 200 acres sold for \$5,000.00 that was assessed for \$700.00.

The personal property for 1937 is assessed \$169,700.00.

In my opinion from my knowledge of the real estate and personal property in the county that is assessed for taxes at not exceeding Sixty Cents on the Dollar.

I do not have before me the exact number of automobiles in the county for which licenses were sold for the year 1937, but for a number of years there has been approximately 3,000 automobiles and from 300 to 500 trucks, and the automobiles and trucks, to say nothing of bank stock and other personal property have amounted to more in dollars and cents than the total assessment for personal property.

These assessments as given in these statistics do not include public utilities, but only local assessments of real estate and personal property, and the cash value of the real estate assessed and the personal property assessed, would in my opinion exceed the assessments by Forty percent.

I am a resident of Carroll County, Tennessee and a tax payer, and my opinion of these matters is based upon my knowledge of the properties of Carroll County.

[fol. 612] (Sgd.) J. W. Jarrett.

Sworn to and subscribed before me, this July 8, 1938. (Sgd.) Jno. T. Peeler, Notary Public. My commission expires July 7, 1942. (Seal John T. Peeler, Notary Public, Carroll Co., Tenn.)

[fol. 613]

CARROLL COUNTY

AFFIDAVIT OF J. W. WILLIAMS

Personally appeared before me John T. Peeler, a Notary Public in and for said State and County, J. W. Williams, who makes oath in due form of law and says that he is County Court Clerk for Carroll County, Tennessee, and has been for the last twelve (12) years.

Affiant says he is personally acquainted with the real estate in Carroll County and that he thinks he knows what would be a fair cash market value for the real estate in the county. That for the year 1937 there are 2,634 town lots assessed for taxes at \$1,879,850.00. That there is assessed 360,050 acres of land at \$4,293,575.00. That the personal property assessed at \$169,700.00.

Affiant says in his opinion that the real estate and personal property is assessed for taxes at not exceeding Sixty percent of a fair cash value. That the assessments above given herein do not include any public utilities.

That the assessment for town lots, acres and personal property for the year 1937 is about the average for a number of years in Carroll County.

(Sgd.) J. W. Williams.

Sworn to and subscribed before me, this July 8, 1938. (Sgd.) Jno. T. Peeler, Notary Public. (Seal John T. Peeler, Notary Public, Carroll Co., Tenn.)

[fol. 614]

CARROLL COUNTY

AFFIDAVIT OF J. R. BOYD

Personally appeared before me, J. T. Peeler, Notary Public, in and for said State and County, J. R. Boyd, who on oath says he is tax assessor for the 2nd Tax Assessor's District of said County, and that taking into consideration the character and location and productiveness of the farm lands in said county, said lands are assessed for taxes at about 60% of their cash value and that town lots are not assessed at more than 50% of their cash value and that per-

personal property is not assessed at more than 40%; that public utilities are not considered in this affidavit.

(Sgd.) J. R. Boyd.

Sworn to and subscribed before me, this June 8th, 1938. (Sgd.) Jno. T. Peeler, Notary Public. Commission expires July 1942. (Seal John T. Peeler, Notary Public, Carroll Co., Tenn.)

[fol. 615]

CARROLL COUNTY

AFFIDAVIT OF J. W. HICKMAN

Personally appeared before me, J. T. Peeler, a Notary Public, J. W. Hickman, and says, "I am the Carroll County secretary & treasurer of Farm Loan Association for the Federal Land Bank, and, as such, have in charge about 500 farms, and I think I know that the farm land in Carroll County is assessed at only about 75 percent of its cash value and do not think the town property is assessed that high. I do not know about the personal property."

(Sgd.) J. W. Hickman.

Sworn and subscribed to before me this June 8th, 1938. (Sgd.) Jno. T. Peeler, Notary Public. My Commission expires July 7, 1942. (Seal John T. Peeler, Notary Public, Carroll Co., Tenn.)

[fol. 616]

CARROLL COUNTY

AFFIDAVIT OF FRED TATE

Personally appeared before me J. T. Peeler, a Notary Public in and for said State and County, Fred Tate, who makes oath and says, I am an abstractor, and live in Huntington and was for a number of years a real estate agent, and now engaged in making abstracts. I was raised in Carroll County, I am acquainted with the county and the real estate, and its value. In my opinion, basing it upon my knowledge the value of the land and the assessment for

taxes, real estate in Carroll County is assessed at a value between Sixty and Seventy percent of its cash value.

(Sgd.) Fred Tate.

Sworn to and subscribed before me, this July 9th, 1938. (Sgd.) Jno. T. Peeler, Notary Public. My commission expires July 7th, 1942. (Seal Jno. T. Peeler, Notary Public, Carroll Co., Tenn.)

[fol. 617]

CHEATHAM COUNTY

		Ratio of Assessed Value to Actual Value
Estelle C. Smith, Sec.-Treas., County Nat'l Farm Loan Ass'n and steno. Chancellor S. A. Marable, formerly holding that position.	Real Estate	66-2/3% to 75%
E. L. Murphy, Land owner and member County Board of Equalization	Real Estate	less than 75%
J. B. Patton, Land owner and former member County Board of Equalization	Real Estate	66 2/3%
S. H. Adkisson, Land owner and former member County Board of Equalization	Real Estate	66 2/3%

[fol. 618]

CHEATHAM COUNTY

AFFIDAVIT OF ESTELLE C. SMITH

Personally appeared before me, B. J. Boyd, a Notary Public in and for said State and County, Estelle C. Smith, who made the following affidavit:

My name is Estelle C. Smith. I am a resident of Cheatham County and have owned farm land in said County, but the only real estate I own now in said County is my home in Ashland City. I am Secretary-Treasurer of the Cheatham County National Farm Loan Association, having succeeded the Honorable S. A. Marable in this place when he was appointed Chancellor of this Division. Before that time I was his stenographer and I still serve him in that capacity. My services in this office and my services to Mr. Marable when he held it have caused me to be familiar with land assessments in Cheatham County. In all applications for loans

from the Federal Land Bank in this County it is one of my duties to find out and report the assessed value of the property for taxation. I also have to look after the appraisals of the property prior to the granting of any loan.

In my opinion, the average assessment of real estate in this County is between two-thirds and three-fourths of its actual value, or sale value.

[fol. 619]

(Sgd.) Estelle C. Smith.

Estelle C. Smith makes oath that the foregoing statement is true to the best of her knowledge, information and belief.

Sworn to and subscribed before me this July 16, 1938.

(Sgd.) B. J. Boyd, Notary Public. (Seal B. J. Boyd, Notary Public, Cheatham County, Tenn.)

[fol. 620]

CHEATHAM COUNTY

AFFIDAVIT OF E. L. MURPHY

Personally appeared before me, B. J. Boyd, a Notary Public, in and for said County and State, E. L. Murphy, who makes the following affidavit.

My name is E. L. Murphy. I reside at Ashland City, and have been a resident of Cheatham County for over thirty years. I own real estate in said County. I am now a member of the Board of Equalization of Cheatham County and our board has completed this work for the year 1938.

It is a very difficult matter to make a uniform assessment of real estate in this County. There are so many different qualities of land, including bottom land, hill land, timber tracts, and cut-over land. Another difficulty arises out of the fact that comparatively few farms are sold for cash, except at forced sales. The most usual form of sale is a cash payment, usually one-third, and the balance on time with interest-bearing notes.

So far as our board has a standard we have been working towards a valuation of seventy five per cent of the actual value of real estate in this County. In my opinion, the average assessed value of all real estate in Cheatham County is less than seventy five per cent of its actual value now.

Of course, the main duty of our board, as we consider it, is to make the assessment as uniform as possible. In a few instances we have found property that we think was assessed

[fol. 621] too high and we have lowered the assessment of such property.

I have personally checked the effect of our work on only two districts in this County, and the result in those two districts has been a small increase in the assessed value of the property.

Our board met the first Monday in June and was in session for nine days, which was broken into two sessions, one of five days and one for four days, with a recess between so that the parties whose properties were under question would have time to receive notice and appear before us.

This July 9, 1938.

(Sgd.) E. L. Murphy.

E. L. Murphy makes oath that the foregoing affidavit is true to the best of his knowledge, information, and belief.

Sworn to and subscribed before me, at Ashland City, Tennessee, this July 9, 1938. (Sgd.) B. J. Boyd, Notary Public. My commission expires Oct. 10, 1938. (Seal B. J. Boyd, Notary Public, Cheatham County, Tenn.)

[fol. 622]

CHEATHAM COUNTY

AFFIDAVIT OF J. B. PATTON

My name is J. B. Patton. I am a resident and land owner in Cheatham County, Tennessee, and have been for fifty years. During that time I have served on the County equalization Board four or five terms, and had occasion to study and to investigate the assessment of real estate in the County. I have not served on the Board during the last seven years.

It was the object of our Board, as I understood it, to equalize assessments as much as possible. We would find some assessed too low and others too high. In my opinion the average assessment of real estate in this County is about two-thirds of its real value. Farms will generally sell for more than they are assessed at, of course I am not including forced sales and mortgage foreclosures.

(Sgd.) J. B. Patton.

Personally appeared before me, Estelle C. Smith, a Notary Public, J. B. Patton, who makes oath that the foregoing statement is true to the best of his knowledge, information and belief. Sworn to and subscribed before me this 15th day of July, 1938.

(Sgd.) Estelle C. Smith, Notary Public. My com. exp. Apr. 6, 1940. (Seal Mrs. Estelle C. Smith, Notary Public, Cheatman Co., Tenn.)

[fol. 623]

CHEATHAM COUNTY

AFFIDAVIT OF S. H. ADKISSON

Personally appeared before me, B. J. Boyd, a Notary Public in and for said State and County, S. H. Adkisson, who made the following affidavit:

I am a native of Cheatham County and have lived here all my life. I am a farmer and own real estate and I have served on the Board of Equalization of Cheatham County for three terms, but not recently.

There is a great variety of land in this County, running from cut-over lands (called timber cuts) not worth over three or four dollars an acre, to bottom lands and level plateau lands, some of which are worth \$100.00 an acre and will sell for that much or more.

In my opinion real estate in Cheatham County, taking an average of the whole is assessed at about two thirds of its actual value and of its sale value.

(Sgd.) S. H. Adkisson, Sr.

S. H. Adkisson makes oath that the foregoing statement is true to the best of his knowledge, information and belief.

Sworn to and subscribed before me, this July 16, 1938.

(Sgd.) B. J. Boyd, Notary Public. My com. exp. Oct. 10, 1938. (Seal B. J. Boyd, Notary Public, Cheatham County, Tenn.)

[fol. 624]

COFFEE COUNTY

Ratio of
Assessed Value
to Actual ValueW. M. McGuire,
Tax Assessor, 6th Civil Dis-
trict, for many yearsReal Estate
Much personalty escapes tax-
ation.

65%

Coy St. John,
County TrusteeReal estate
1936 taxes 25% uncollected.
1937 taxes 33-1/3% uncol-
lected.

60% to 65%

In many civil districts very
little personalty is assessed.J. F. Smartt,
County Court Clerk

Real estate

65%

F. A. Johnston,
Member County Board of
Equalization

Real estate

65%

G. R. Norton,
Employee State Dept. High-
ways & Public Works;
County Trustee 1920-1924
inclusive.

Real Estate

65%

[fol. 625]

COFFEE COUNTY

AFFIDAVIT OF W. B. McGUIRE

Personally appeared before me, Leighton Ewell, a Notary Public in and for said County and State, W. B. McGuire, who being sworn by me, makes the following statements under oath:

That he is the duly elected, qualified and acting Tax Assessor of the Sixth Civil District of Coffee County, Tennessee, and has held said office for many years. That he was last elected to said office in August, 1936.

That the percentage of assessed value to the real or actual value of real estate located in the said Civil District and in all Civil Districts of Coffee County, is about sixty-five (65) per cent. In other words, real estate in said County is assessed for taxation at only about 65 per cent of its actual value.

He further states that real estate has been assessed for taxation, both by the various tax assessors and the Board of Equalization in the manner above set forth for many years, and that he as such Assessor simply followed the practice of his predecessors in office in the valuation of real estate for taxation purposes. That it is a well known fact,

and generally understood by all persons and officials concerned that real estate in Coffee County is never assessed for taxation at its actual or full value. That the Board of Equalization of said County in most cases never increase the valuations of real estate to more than 65 per cent of the [fol. 626] actual value of the same. He further states that it is difficult to obtain accurate and true statements from many owners of personal property as to the amount and value of the same, hence much personal property escapes taxation.

(Sgd.) W. B. McGuire, Tax Assessor.

Sworn to and subscribed before me, this July 1, 1938.

(Sgd.) Leighton Ewell, Notary Public. My commission expires 7-14-1940. (Seal Leighton Ewell, Notary Public, Coffee Co., Tenn.)

[fol. 627]

COFFEE COUNTY

AFFIDAVIT OF COY ST. JOHN

Personally appeared before me, Leighton Ewell, a Notary Public in and for said County and State, Coy St. John, who being first duly sworn by me, makes the following statements under oath:

That he is the duly elected, qualified and acting Trustee of Coffee County, Tennessee, having been elected to said position in August, 1936.

That real estate in Coffee County, Tennessee, is assessed for taxation at a valuation of about sixty to sixty-five per cent of its actual or real value. That there are some instances or cases where the assessed value is in greater proportion than that above indicated, but as a whole the assessed valuation is in the neighborhood of sixty to sixty-five per cent of the true value.

He further states that about twenty-five per cent of taxes assessed against property owners in said County for the year 1936 remain unpaid and uncollected; that about thirty-three and one-third per cent of taxes for the year 1937 are unpaid.

That there have been no sales of property for delinquent taxes in Coffee County for many years—for more than

twelve years, and this accounts in part for many property owners failing to pay taxes assessed against them.

[fol. 628] That in many Civil Districts in the County very little personal property is assessed for taxation.

(Sgd.) Coy St. John, Trustee, Coffee Co., Tenn.

Sworn to and subscribed before me, this July 1, 1938.

My commission expires 7-14-1940. (Seal Leighton Ewell, Notary Public, Coffee Co., Tenn.)

[fol. 629]

COFFEE COUNTY

AFFIDAVIT OF J. F. SMARTT

Personally appeared before me, Leighton Ewell, a Notary Public in and for said County and State, J. F. Smartt, who being duly sworn by me, makes the following statements under oath:

That he is the duly elected, qualified and acting Clerk of the County Court of Coffee County, Tennessee, having been elected to said office in August 1934.

That he is familiar with assessments of real estate in said County, for taxation purposes; that in his opinion the aggregate assessment of real estate in said County for the year of 1937 will not exceed sixty-five per cent of the actual or true value of the same. That for many years property has not been assessed at its true value in said County.

(Sgd.) J. F. Smartt, County Court Clerk.

Sworn to and subscribed before me, this July 2, 1938.

(Sgd.) Leighton Ewell, Notary Public. My commission expires 7-14-1940. (Seal Leighton Ewell, Notary Public, Coffee Co., Tenn.)

[fol. 630]

COFFEE COUNTY

AFFIDAVIT OF F. A. JOHNSTON

Personally appeared before me, Leighton Ewell, a Notary Public in and for said County and State, F. A. Johnston, who being first sworn by me, makes the following statements under oath:

That he is a member of the Board of Equalization of Coffee County, Tennessee; that real estate in said County

is assessed for taxation in most instances at a valuation not exceeding sixty-five (65) per cent of its actual or true value. That assessments of real estate have been made in this manner or upon this basis for a number of years, in Coffee County. That in his opinion, based upon his information and knowledge of assessments in said County, the aggregate assessment of real estate in said County will not exceed sixty-five per cent of the true value of the same.

(Sgd.) F. A. Johnston.

Sworn to and subscribed before me, this July 2nd, 1938. (Sgd.) Leighton Ewell, Notary Public. My commission will expire 7-14-1940. (Seal Leighton Ewell, Notary Public, Coffee Co., Tenn.)

[fol. 631]

COFFEE COUNTY

AFFIDAVIT OF G. R. NORTON

Personally appeared before me, Leighton Ewell, a Notary Public in and for said County and State, G. R. Norton, who being first duly sworn by me, makes the following statements under oath:

That he is a resident of Coffee County, Tennessee, and is an employee of the Department of Highways and Public Works of the State of Tennessee; that he served as Trustee of Coffee County, Tennessee, from 1920 to 1924, inclusive.

That in his opinion the aggregate assessment of real estate in said County for taxation will not exceed sixty-five per cent of the actual or true value of the same. That for several years it has been the custom and practice in said County for assessments to be made at a valuation much less than the real or actual value of the property assessed. As a general rule property is not assessed at a value exceeding sixt five per cent of its actual value.

(Sgd.) G. R. Norton.

Sworn to and subscribed before me, this July 2, 1938.

(Sgd.) Leighton Ewell, Notary Public. My commission expires 7-14-1940. (Seal Leighton Ewell, Notary Public, Coffee Co., Tenn.)

[fol. 632]

DICKSON COUNTY

Ratio of
Assessed Value
to Actual Value

Henry Sensing, Dep. County Trustee	1936 taxes 14% uncollected in February, 1936. 1937 in May, 1937 about 1/3 col- lected	
M. C. Gray, Member County Board of Equalization	Real and personal	60%
W. M. Leech, County Judge	Real estate	60%
Lee Mathis, Jr., County Court Clerk	Real estate	60%
Joe B. Weems, Attorney and former County Judge for 16 years	Real Estate	60%
J. J. Taylor, Clerk and Master for 27 years	Real Estate	60%

[fol. 633]

DICKSON COUNTY

AFFIDAVIT OF HENRY SENSING

Personally appeared before me, J. B. White, a Notary Public in and for said County and State, Henry Sensing, who makes oath that he is the deputy Trustee of Dickson County and that the books of his office show that for the year 1936 taxes assessed in Dickson County totaled \$4,025,625. He further states that in February of that year his books showed an uncollected balance of \$566,875 or approximately 14% of the real and personal taxes assessed of the county being uncollected.

The affiant further states that taxes assessed in Dickson County for 1937 totaled \$3,983,275 and that in May of 1937 the books of his office showed an uncollected balance of \$1,353,450 or approximately — % of the taxes assessed for 1937 as being uncollected. The affiant further states that for the year 1936 the total county tax rate in Dickson County for all purposes amounted to \$—— and that for the year 1937 the total County tax rate for all purposes amounted to \$2.29.

(Sgd.) Henry Sensing.

Subscribed and sworn to before me, this the 6th day of July, 1938. (Sgd.) J. B. White, Notary Public. My commission expires Jan. 24, 1940. (Seal J. B. White, Notary Public, Dickson County, Tenn.)

[fol. 634]

DICKSON COUNTY

AFFIDAVIT OF M. C. GRAY

Personally appeared before me, J. B. White, a Notary Public in and for said state and county, M. C. Gray, who states that he is one of the duly elected, qualified and acting members of the Dickson County Board of Equalization, and that as such he assisted the other members of said board of Equalization in the duties as required of them by law with regard to the fixing of 1937 assessments of taxes on real estate and personal property within the said county.

Affiant states that the aggregate assessments made for 1937 in Dickson County are as follows:

Acreage Assessment	\$2,533,282
Town Lots	1,373,527
<hr/>	
Total Real Estate	3,906,807
Personal Property	124,230
Total Assessments, real and personal	4,131,307
Public Utilities	1,052,168
Total Assessed Valuation	\$5,052,205

Affiant further states that the foregoing assessments, except the public utilities are fixed by the County Tax Assessors and are approved by the County Board of Equalization before becoming final and he states that he is informed and believes and so states upon information and belief that the total taxable wealth of Dickson County is approximately \$8,500,000, and that upon this actual estimate of tax wealth dealers in bonds of the county accept as accurate, and so represent to the bond buying public to [fol. 635] be a fair estimate of the taxable wealth of the County.

Affiant states that both the basis of the foregoing estimate of the taxable wealth of Dickson County and the basis of the actual assessments made therein of real and personal property that such said property is assessed in Dickson County at only approximately 60% of the actual value. Affiant states that he has been a resident of Dickson County for a number of years and that since his residence here, the property in Dickson County both real and personal has been assessed at from between 50 to 60% of its actual value. The foregoing statements, except those made on infor-

ration and belief are made as being in the knowledge of the affiant.

(Sgd.) M. C. Gray.

Subscribed and sworn to before me, this the 6th day of July, 1938. (Sgd.) J. B. White, Notary Public. My commission expires Jan. 24, 1940. (Seal J. B. White, Notary Public, Dickson County, Tenn.)

[fol. 636]

DICKSON COUNTY

AFFIDAVIT OF W. M. LEECH

I, W. M. Leech, make oath that I am the County Judge of Dickson County, Tennessee, and have been serving in such capacity since September 1, 1934. It is a part of my duties to examine the tax books and look to the property assessments with the view of preparing budget for the county's operating expenses during each fiscal year. In this capacity it has frequently been brought to my attention and I have heretofore so certified to bond houses that it has been the custom to assess the real estate at approximately 60% of its actual cash value. I know that this custom has been followed for the past four years, and it is my understanding that it has been the custom for several years prior to that date.

(Sgd.) W. M. Leech.

Sworn to and subscribed before me, this the 21st day of July 1938. (Sgd.) Mrs. Loulie Anderson, Notary Public. My commission expires October 18, 1938. (Seal.)

I, Lee Mathis, Jr., duly elected and qualified County Court Clerk of Dickson County, Tennessee, have read the foregoing affidavit and I concur therein as to the estimate of the value of real estate as between the assessments and the actual value as placed thereon by Judge Leech.

(Sgd.) Lee Mathis, Jr.

Sworn to and subscribed before me, this the 21st day of July 1938. (Sgd.) Mrs. Loulie Anderson, Notary Public. My commission expires October 18, 1938. (Seal.)

[fol. 637]

DICKSON COUNTY

AFFIDAVIT OF JOE B. WEEMS

I, Joe B. Weems, of Dickson, Tennessee, make the following statement upon oath:

I am now fifty one years of age, and have resided in Dickson, Tenn. since the summer of 1911. I am an attorney at law, and was for sixteen years County Judge of Dickson County, Tennessee.

I have for the past twenty five years dealt considerably in real estate, and have been familiar with other real estate transactions in this and other sections of the County, and am familiar with the general market values of real estate in and about Dickson, and am also familiar with the manner of assessing real estate in this County for taxation purposes.

From my knowledge of the general assessments of property for taxation I consider that the property of Dickson County is assessed at about 60% of its actual cash value.

This July 21st, 1938.

(Sgd.) Joe B. Weems.

Sworn to and subscribed to before me this the 21st day of July, 1938. (Sgd.) J. F. Crosby, Notary Public. My Commission Expires Nov. 12, 1939. (Seal J. F. Crosby, Notary Public, Dickson County, Tenn.)

[fol. 638]

DICKSON COUNTY

AFFIDAVIT OF J. J. TAYLOR

I, J. J. Taylor, Clerk & Master of the Chancery Court of Dickson County, Tenn., and have held said office for about 27 years, and that as such Clerk & Master, I have been handling and collecting delinquent taxes for Dickson County for the past 12 or 15 years, and at this time I have in my office for collection, and for which suit have been brought, the delinquent taxes of the County, from 1922 to 1935, both inclusive, and from my observation and experience in the collection of said taxes, I have observed that the valuations of property so delinquent would average about 60% of the real value of the property, in Dickson County. This would

not apply to delinquent property but to all real estate in Dickson County, the average assessed valuation would be about 60% of the real value of the property.

(Sgd.) J. J. Taylor, Clerk & Master.

(Seal J. J. Taylor, C. & M., Dickson County, Tennessee Chancery Court Seal.)

[fol. 639]

FAYETTE COUNTY

		Ratio of Assessed Value of Actual Value
S. P. Crawford, Tax Assessor 1920-1936	Real estate Not over 10% personal prop- erty taxed.	66 2/3%
A. D. Dobbins, Tax Assessor	Real estate Not over 25% personal prop- erty taxed.	66 2/3%
M. Baird, Member Equalization Board	Real estate	75%
T. D. Boswell, Member Equalization Board	Real estate	75%
H. B. Sadler, Member Equalization Board	Real estate	75%
H. P. Stainback, President, Sornerville Bank & Trust Co.	Real estate Less than 25% personal prop- erty taxed.	60%

[fol. 640]

FAYETTE COUNTY

AFFIDAVIT OF S. P. CRAWFORD

Personally appeared before me, F. B. Mooriman, a Notary Public duly commissioned and acting in and for the state and county aforesaid, S. P. Crawford, the within named affiant, with whom I am personally acquainted and who, first having been duly sworn, deposes and says as follows:

That he is a resident citizen of Fayette County, Tennessee, over the age of 21 years, and has been such resident all his life; that he was Tax Assessor of Fayette County from 1920 until 1936, and that as such he is familiar with the assessed valuation of farm lands and town lots and of personal property and with the actual cash value thereof in Fayette County.

That in his opinion farm land and town lots in said county are assessed for the year 1938 at about 66 2/3 per

cent of their actual cash value, and that not over ten per cent of the personal property subject to taxation in said county is assessed for taxation for the year 1938.

(Sgd.) S. P. Crawford.

Sworn to and subscribed before me this 8th day of July, 1938. (Sgd.) F. B. Moorman, Notary Public. My commission expires on the 21st day of Feb., 1939. (Seal F. B. Moorman, Notary Public, Fayette Co., Tenn.)

[fol. 641]

FAYETTE COUNTY

AFFIDAVIT OF A. D. DOBBINS

Personally appeared before me, F. B. Moorman, a Notary Public duly commissioned and acting in and for the State and County aforesaid, A. D. Dobbins, the within named affiant, with whom I am personally acquainted and who first having been duly sworn deposes and says as follows:

That he is a resident citizen of Fayette County, Tennessee, over twenty-one years of age and has resided in said State and County all his life; and that he is now, and has been since September 1, 1936, the tax assessor of Fayette County, Tennessee.

That as such tax assessor of Fayette County, Tennessee, it has been his duty to familiarize himself with the assessed valuations of all property subject to assessment by him in Fayette County, Tennessee and also with the actual cash value of said property.

He further deposes and says that in his opinion, farm lands and town lots in Fayette County, Tennessee, are assessed for the year 1938 at about 66 $\frac{2}{3}$ per cent of the actual cash value; and that not over 25 per cent of the personal property subject to taxation is assessed for taxation for the year 1938 in said County and State.

(Sgd.) A. D. Dobbins.

Sworn to and subscribed before me, this 8th day of July, 1938. (Sgd.) F. B. Moorman, Notary Public. My commission expires on the 21st day of Feb., 1939. (Seal.)

[fol. 642]

FAYETTE COUNTY

AFFIDAVIT OF M. BAIRD

Personally appeared before me, F. B. Moorman, a Notary Public duly commissioned and acting in and for the County and State aforesaid, M. Baird, the within named affiant with whom I am personally acquainted and who first having been duly sworn deposes and says as follows:

That he is a resident citizen of Fayette County, Tennessee, and has resided in said State and County all his life and that he is now and has been for 6 years a member of the Equalization Board of Fayette County, Tennessee.

That to the extent that the duties of his office justify he believes himself to be generally familiar with the assessed valuations of farm lands and city real estate in Fayette County, Tennessee, to the extent the same can be known with the actual cash value of said property in said County. It is his opinion that the assess valuations of said property in Fayette County represent 75 per cent of the actual cash value of said property.

(Sgd.) M. Baird.

Sworn to and subscribed before me this 5 day of July, 1938. (Sgd.) F. B. Moorman, Notary Public. My commission expires on the 21st day of Feb., 1939. (Seal F. B. Moorman, Notary Public, Fayette County, Tenn.)

[fol. 643]

FAYETTE COUNTY

AFFIDAVIT OF T. D. BOSWELL

Personally appeared before me, F. B. Moorman, a Notary Public duly commissioned and acting in and for the County and State aforesaid, T. D. Boswell, the within named affiant with whom I am personally acquainted and who first having been duly sworn deposes and says as follows:

That he is a resident citizen of Fayette County, Tennessee and has resided in said State and County all his life and that he is now and has been for 4 years, a member of the Equalization Board of Fayette County, Tennessee.

That to the extent that the duties of his office justify he believes himself to be generally familiar with the assess

valuations of farm lands and city real estate in Fayette County, Tennessee, to the extent the same can be known with the actual cash value of said property in said County. It is his opinion that the assess valuations of said property in Fayette County represent 75 per cent of the actual cash value of said property.

(Sgd.) T. D. Boswell.

Sworn to and subscribed before me this 5th day of July, 1938. (Sgd.) F. B. Moorman, Notary Public. My commission expires on the 21st day of Feb., 1939. (Seal F. B. Moorman, Notary Public, Fayette County, Tenn.)

[fol. 644]

FAYETTE COUNTY

AFFIDAVIT OF H. B. SADLER

Personally appeared before me, F. B. Moorman, a Notary Public duly commissioned and acting in and for the County and State aforesaid, H. B. Sadler, the within named affiant with whom I am personally acquainted and who first having been duly sworn deposes and says as follows:

That he is a resident citizen of Fayette County, Tennessee, and has resided in said State and County practically all his life and that he is now and has been for 6 or 8 years a member of the Equalization Board of Fayette County, Tennessee.

That to the extent that the duties of his office justify he believes himself to be generally familiar with the assess valuations of farm lands and city real estate in Fayette County, Tennessee, to the extent the same can be known with the actual cash value of said property in said County. It is his opinion that the assess valuations of said property in Fayette County represent 75 per cent of the actual cash value of said property.

(Sgd.) H. B. Sadler.

Sworn to and subscribed before me this 5th day of July, 1938. (Sgd.) F. B. Moorman, Notary Public. My commission expires on the 21st day of February, 1939. (Seal F. B. Moorman, Notary Public, Fayette County, Tenn.)

[fol. 645]

-FAYETTE COUNTY

AFFIDAVIT OF H. P. STAINBACK

Personally appeared before me, F. B. Moorman, a Notary Public duly commissioned and acting in and for the State and County aforesaid, H. P. Stainback, the within named affiant with whom I am personally acquainted and who first having been duly sworn deposes and says as follows:

That he is a resident citizen of Fayette County, Tennessee, over the age of twenty-one years and is, and has been, for a number of years past, president of the Somerville Bank and Trust Company of Somerville, Tennessee, and that prior to that time he was Cashier of said Bank and has been connected in some capacity in the banking business practically all his life; and that he is also an owner of considerable farm lands and city property in Fayette County, Tennessee; and that in his capacity as banker and land owner, he believes himself to be familiar with assessed valuations of farm lands and city property in Fayette County, Tennessee, and with the assessed valuations of personal property therein, and that he is also familiar with the cash value of said classes of property in Fayette County, Tennessee.

He states that in his opinion the assessed value of farm lands and townlots in Fayette County, Tennessee for the year 1938 represents not more than 60% of their actual cash value; and that less than 25 per cent of the personal property subject to taxation in Fayette County, Tennessee, [fol. 646] for the year 1938 is actually assessed for taxation.

(Sgd.) H. P. Stainback.

Sworn to and subscribed before me this 6th day of July, 1938. (Sgd.) F. B. Moorman, Notary Public.

My commission expires on the 21st day of February, 1929. (Seal F. B. Moorman, Notary Public, Fayette County, Tenn.)

[fol. 647]

FAYETTE COUNTY

AFFIDAVIT OF BLAKE STAINBACK

Personally appeared before me, F. B. Moorman, a Notary Public duly commissioned and acting in and for the State

and County aforesaid, Blake Stainback, the within-named affiant with whom I am personally acquainted and who first having been duly sworn deposes and says as follows:

That he is a resident citizen of Fayette County, Tennessee, over the age of twenty-one years and that he is Secy.-Treasurer of the Fayette County National Farm Loan Association and is also engaged in the Fire Insurance business in Somerville, Tennessee, writing both city insurance and general farm insurance; and that he has been Secretary-Treasurer of said Farm Loan Association for the past six or seven years and engaged in the insurance business for many years and that prior to his connection with said farm loan association, he was for many years in the employ of the local bank; and that by reason of his experience aforesaid, he is acquainted with the assessed valuations of all classes of property subject to assessment by the County assessor of Fayette County, Tennessee, and with the actual cash value of said property.

He states that in his opinion the assessed value of farm lands and town lots in Fayette County, Tennessee for the year 1938 represents not more than 60 per cent of their actual cash value; and that less than 25 percent of the personal property subject to taxation in Fayette County, [fol. 648] Tennessee, for the year 1938 is actually assessed for taxation.

(Sgd.) Blake Stainback.

Sworn to and subscribed before me this 6th day of July 1938. (Sgd.) F. B. Moorman, Notary Public. My commission expires on the 21st day of February 1939. (Seal F. B. Moorman, Notary Public, Fayette County, Tenn.)

fol. 649]

FRANKLIN COUNTY

		Ratio of Assessed Value to Actual Value
J. A. Smith, County Tax Assessor	Real and personal	60%
Jas. F. Skidmore, Chairman, County Board of Equalizers and a surveyor	Real and personal	60%
J. B. Templeton, County Judge	Real and personal	60%

[fol. 650]

FRANKLIN COUNTY

AFFIDAVIT OF J. A. SMITH

Personally appeared J. A. Smith and makes oath in due form of law that he is the Tax Assessor in and for Franklin County; that he has assessed the property of Franklin County, Tennessee for several years and that in each and every assessment made by him he has endeavored to do equal justice to all people; that when assessing the property of the county he would adopt a basis of assessment that in so far as it was possible he would adhere to that basis; that in all of his assessments he has adopted a basis of approximately sixty (60) per cent of the actual or sale value of the property in making his assessments; that upon the convening of the Board of Equalizers he has at all times informed said Board of his basis of assessments and that in so far as he has been able to ascertain the said Board has attempted in all cases to adhere to affiant's assessments; that affiant knows nothing about the "cash value" of the property in the County as used by the Bond Houses in the sale of County Bonds; that in making his assessments affiant has attempted to assess all personal property on the same basis as the real property, but because of the Hall Income Tax Law affiant has been unable to make assessment against all of the personal property within the county, especially that property covered by said Income tax, and affiant avers and believes he has assessed all of the taxable personal property which he has [fol. 651] been able to discover.

(Sgd.) J. A. Smith.

Sworn to and subscribed before me, this the 9th day of July, 1938. (Sgd.) J. B. Templeton, County Judge. (Seal J. B. Templeton, County Judge, Franklin County, Tenn.)

[fol 652]

FRANKLIN COUNTY

AFFIDAVIT OF J. F. SKIDMORE

Personally appeared Jas. F. Skidmore and made oath in due form of law that he is the Chairman of the Board of Equalizers of Franklin County, Tennessee; that he has

been a surveyor in said county for more than forty years, have surveyed a large amount of the lands in said county and knows the value of the lands situated in said County; that as a member of the Board of Equalizers he has at all times endeavored to equalize the assessed valuation of the property of the county, doing equal justice to all; that he has reviewed the assessments made by the Tax Assessor of the County and believes that assessments were made on something like sixty per cent of the actual or sale value of the property; that said Board of Equalizers adopted this basis in the equalizing of the taxes and adhered to said percentage as nearly as possible in all cases.

Affiant further avers that, in so far as possible, the Board equalized the assessment of personal property on the same basis as that used in regard to the real property of the County.

(Sgd.) J. F. Skidmore.

Sworn to and subscribed before me, this the 9th day of July, 1938. (Sgd.) J. B. Templeton, County Judge. (Seal J. B. Templeton, County Judge, Franklin County, Tenn.)

[fol. 653]

FRANKLIN COUNTY

AFFIDAVIT OF J. B. TEMPLETON

Personally appeared J. B. Templeton and made oath in due form of law that he is County Judge of Franklin County, Tennessee, and as such is an ex officio member of the Board of Equalization of said County; that he assists said Board in equalizing the taxes of the county and is familiar with property values of the county; that he has reviewed the assessments made by the Tax Assessor of said county and the tax aggregate as fixed by the Board of Equalizers, and that in his opinion said assessments were made and equalized on a basis of approximately sixty per cent of the actual or sale value of the property assessed.

Affiant further avers that only a small amount of the taxes in said county remain unpaid for the year 1936, not more than six or eight per cent, and that the collection of the taxes for the year 1937 have been exceptionally good.

Affiant further avers that the Tax Assessor in said county has had considerable trouble in discovering personal property for assessment because of the Hall Income Tax, but that such property as is discovered is assessed on the same rate of valuation as is the real property. (Sgd.) J. B. Templeton.

Sworn to and subscribed before me, this the 9th day of July, 1938. (Sgd.) J. E. Crownover, County Court Clerk, County Court, Franklin County, Tennessee. (Seal.)

[fol. 654]

GRUNDY COUNTY

Ratio of
Assessed Value
to Actual ValueChas. W. Smith,
Judge County Court

Real and personal

60%

Dee Meeks,
County Tax Assessor

Real and personal

60%

[fol. 655]

GRUNDY COUNTY

AFFIDAVIT OF CHAS. W. SMITH

As per actual assessed value of the assessed property of Grundy County by the Tax Assessor of said County, both real and personal.

Personally appeared before me, Hubert Lusk, County Court Clerk of Grundy County, Tennessee, Chas. W. Smith, Judge, County Court, Grundy County, and made oath that the actual assessed value of the real and personal property in Grundy County for the years 1936, 1937 and 1938 is about 60 percent of the actual cash or sale value of said property as made by the County Tax Assessor for Grundy County for said years.

(Sgd.) Chas. W. Smith, Judge, County Court, Grundy County.

Subscribed and sworn to before me on this the 19th day of July, 1938. (Sgd.) Hubert Lusk, County Court Clerk, County Court, Grundy County, Tenn. (Seal.)

[fol. 656]

GRUNDY COUNTY

AFFIDAVIT OF DEE W. MEEKS

As per actual assessed value of the assessed property of Grundy County by the Tax Assessor of said County, both real and personal.

Personally appeared before me, Hubert Lusk, County Court Clerk of Grundy County, Tennessee, Dee Meeks, Tax Assessor, Grundy County, Tennessee, and made oath that the actual assessed value of the real and personal property in Grundy County for the years 1936, 1937 and 1938 is about 60 percent of the actual cash or sale value of said property as made by the County Tax Assessor for Grundy County for said years.

(Sgd.) D. W. Meeks, Tax Assessor, Grundy County, Tennessee.

Subscribed and sworn to before me on this the 19th day of July, 1938. (Sgd.) Hubert Lusk, County Court Clerk, County Court, Grundy County, Tenn. (Seal.)

[fol. 657]

HAMILTON COUNTY

Certified copy of statement signed by Will Cummings, County Judge of Hamilton County, as of March 31, 1938, showing the actual or full valuation, 1937 (estimated) of all property in Hamilton County \$225,000,000; assessed valuation, 1937 \$136,916,762.

[fol. 658]

HARDEMAN COUNTY

Ratio of
Assessed Value
to Actual Value

John L. Mitchell, Cashier Bank of Bolivar with extensive property in- terest	1936 and 1937 Real estate	65% to 70%
	Considerable personalty es- capes taxation due to exemp- tion and income tax law. 10% or 15% of 1936 and 1937 taxes uncollected. 1937 rail- road taxes not paid.	
J. W. Jacobs, County Register, former member Board of Aldermen of Bolivar, member 1937 County Board of Equalizers	Real estate	65%
	Comparatively little per- sonalty is assessed account exemption laws and larger amount of non-exempt es- capes taxation.	
T. P. Campbell, Property owner for 60 years, former Board of Equaliza- tion, has collected taxes for 30-years, member of Quart- erly Court	Real estate	65%
	Great amount of personalty escapes taxation due to ex- emption and Hall income tax law.	
T. E. Anderson, Property owner for 30 years, familiar with values and assessments.	Real estate	65%
	Considerable personalty es- caping taxation.	
Frank Hanna, County Trustee for 10 years.	Property	75%
	1936 taxes 13% uncollected.	

[fol. 659]

HARDEMAN COUNTY

AFFIDAVIT OF JOHN L. MITCHELL

Personally appeared before me the undersigned author-
ity, John L. Mitchell, with whom I am personally ac-
quainted, and who makes oath in due form of law that he
is Cashier of the Bank of Bolivar, Bolivar, Tennessee, and
has been for more than 25 years, and that he has resided
in Hardeman County, Tennessee, all his life and owns ex-
tensive property interest in said County, and that he has
been more or less familiar with the assessed value of
lands in said County for at least 25 years; and that in his
opinion the assessments of real estate for the years 1936
and 1937 will run about 65 to 70 per cent of the actual value
of the real estate. Affiant further makes oath that in his
opinion there is considerable personal property that has
escaped taxation in said County for the years 1936 and
1937, and that in his opinion this is due to the fact of the
\$1,000.00 constitutional exemption and also to what is

known as the Income Tax Law in Tennessee, which provides a tax only on the income for certain classes of personal property.

Affiant further states that he is reliably informed that for the years 1936 and 1937, that the taxes collected amount to 85 or 90 per cent. Affiant is unable to state just what percentage of taxes for the year 1937 have been paid. He is further informed that the railroads running through [fol. 660] Hardeman County, Tennessee, have not paid their taxes for the year 1937.

(Sgd.) Jno. L. Mitchell.

Sworn to and subscribed before me, this the 5th day of July, 1938. (Sgd.) Mrs. M. L. Partridge, N. P. My com. expires Jan. 8th, 1942. (Seal Mrs. M. L. Partridge, Notary Public, Hardeman County, Tennessee.)

[fol. 661]

HARDEMAN COUNTY

AFFIDAVIT OF J. W. JACOBS

Personally appeared before me, the undersigned authority, J. W. Jacobs, with whom I am personally acquainted and who on oath says he is past 70 years of age, and that he has resided in said County all of his life, and has been a property owner in said County for 35 years. He has served as County Register of said County for 17 years, and also served on the Board of Aldermen of Bolivar, Tennessee, and served as a member on the County Board of Equalizers in the year 1937, and that from his observation the assessed value of the real estate of said County is approximately 65 per cent of its cash value. That comparatively little of the personal property in said County is assessed for taxation on account of the exemption laws, and affiant is further of the opinion that the larger amount of personal property in said County which is not exempt escapes taxation.

(Sgd.) J. W. Jacobs.

Sworn to and subscribed before me, this the 5th day of July, 1938. (Sgd.) Mrs. M. L. Partridge, N. P. My com. expires Jan. 8th, 1942. (Seal Mrs. M. L. Partridge, Notary Public, Hardeman County, Tenn.)

[fol. 662]

HARDEMAN COUNTY

AFFIDAVIT OF T. P. CAMPBELL

Personally appeared before me, the undersigned authority, T. P. Campbell, age 86 years, and who makes oath in due form of law that he has resided in Hardeman County, Tennessee, all his life, and that he has been a property owner in said County for 60 years, and that he has had several years experience on different boards of equalization of said County, also in the collection of taxes, and that he is now a member of the Quarterly Court of said County, and has been for about 30 years, and that he is of the opinion that he knows the values generally of real estate in Hardeman County, and that in his opinion the real estate in said County is assessed at approximately 65 per cent of its actual value, and that he is further of the opinion that there is a great amount of personal property that escapes taxation. This is on account of the fact of the exemption laws, and also what is known as the Hall Income Tax Law, which taxes income on certain securities rather than a direct tax on the principal.

(Sgd.) T. P. Campbell.

Sworn to and subscribed before me, this the 5th day of July, 1938. (Sgd.) Mrs. M. L. Partridge, N. P. My com. expires Jan. 8th, 1942. (Seal Mrs. M. L. Partridge, Notary Public, Hardeman County, Tenn.)

[fol. 663]

HARDEMAN COUNTY

AFFIDAVIT OF T. E. ANDERSON

Personally appeared before me, the undersigned authority, T. E. Anderson, who makes oath that he is 63 years of age, and that he is now and has been a property owner in Hardeman County, Tennessee, for more than 30 years, and that he has resided in said County practically all his life, and that in his opinion he is familiar generally with the property values of the County, and that the assessment of same, and in his opinion the real estate in said County is assessed at approximately 65 per cent of its actual value. Affiant further makes oath that in his opinion a considerable

amount of personal property in said County is escaping taxation.

(Sgd.) T. E. Anderson.

Sworn to and subscribed before me, This the 5th day of July, 1938. (Sgd.) Mrs. M. L. Partridge, N. P. My com. expires Jan. 8th, 1942. (Seal Mrs. M. L. Partridge, Notary Public, Hardeman County, Tenn.)

[fol. 664]

HARDEMAN COUNTY

AFFIDAVIT OF FRANK HANNA

Personally appeared before me, the undersigned authority, Frank Hanna, with whom I am personally acquainted, who states on oath that he is Trustee of Hardeman County, Tennessee, and has been trustee of said County for the past eleven (11) years, and states that in his opinion that the property assessed in said County is all on a basis of approximately $\frac{3}{4}$ or 75 per cent of its actual value. Affiant further makes oath that the percentage of taxes assessed for the year 1936, which have been paid amounts to about 87 per cent.

(Sgd.) Frank Hanna.

Sworn to and subscribed before me, This the 5th day of July, 1938. (Sgd.) Mrs. M. L. Partridge, N. P. My com. expires Jan. 8th, 1942. (Seal Mrs. M. L. Partridge, Notary Public, Hardeman County, Tenn.)

[fol. 665]

HAYWOOD COUNTY

Ratio of
Assessed Value
to Actual Value

P. P. McClanahan, County Trustee	Real estate 1936 taxes 15% uncollected. 1937 taxes 26% uncollected.	50% to 60%
Joe T. Mann, Member Board of Equaliza- tion 1936-1937	Real estate	60%
George Chamberlain, Real estate agent 30 years.	Real estate Large portion of personality not assessed.	50%
John O. Bomer, Pres., Brownsville Bank, Mayor or Pres. Board Com- missioner, Brownsville for past 12 years.	Real estate Large portion of personality escapes taxation.	50%
G. N. Albright, Clerk and Master	1936 taxes delinquent on as- sessed valuation of 889,016.00. Collected taxes on value 35,- 375.00 leaving July 1, 1938 delinquent uncollected 1936 taxes on assessed valuation of \$853,641.00.	
Geo. W. Lyle, Pres. First State Bank of Brownsville and land owner.	Real estate Large percent personality es- capes taxation.	50%
Charles B. Jacobs County tax assessor and for last 10 years	Real estate Property throughout state and in other counties 50%.	30%

[fol. 666]

HAYWOOD COUNTY

AFFIDAVIT OF P. P. McCLANAHAN

Affiant, P. P. McClanahan, makes oath that he is the Trustee for Haywood County, Tennessee, and has been since Sept. 1934.

That he believes he is reasonably familiar with value of real estate in Haywood County, Tennessee, and having the assessments of same in his office, after having first been acted on by the Equalization Board, he knows the assessments, and in his opinion they are only about fifty to sixty per cent of the real value of the respective properties.

That for the year 1936 he collected only 85 per cent approximately of said taxes, before turning over the uncollected taxes, as required by law, to the Clerk & Master, of the Chancery Court.

That for the year 1937 he has collected to date only 74% per cent of the taxes for said year 1937.

(Sgd.) P. P. McClanahan

Subscribed and sworn to before me, J. W. Norris, on this the 1st day of July 1938. (Sgd.) J. W. Norris, Notary Public. My commission expires 4-7-40. (Seal J. W. Norris, Notary Public, Haywood County, Tenn.)

[fol. 667]

HAYWOOD COUNTY

AFFIDAVIT OF JOE T. MANN

Affiant, Joe T. Mann, makes cath that he has been a member of Board of Equalization for Haywood County, State of Tennessee, for years 1936-37.

That he believes that he is fairly familiar with the values of real estate in said County. That the assessment of same for each of said years are only about sixty per cent of the real values of same.

For a number of years it has been the custom to assess real estate at about sixty per cent of its actual value, in this County.

That affiant is an owner of real estate in Haywood County, Tennessee.

(Sgd.) Joe T. Mann.

Subscribed and sworn to before me, Aaron Kinney, this the 30th day of June 1938. (Sgd.) Aaron Kinney, Notary Public. My commission expires 4-2-39. (Seal Aaron Kinney, Notary Public, Haywood Co., Tenn.)

[fol. 668]

HAYWOOD COUNTY

AFFIDAVIT OF GEORGE CHAMBERLAIN

Affiant, George Chamberlain, makes oath that he is a resident and citizen of Haywood County, Tennessee, and has been for over 43 years. That he is an owner of real estate in said County and has been a real estate dealer, buying and

selling real estate for others, and has been for 30 years. That in this way he has become familiar with the values of real estate in said County and that in his opinion, the real estate in said County is assessed at only about 50 per cent of its real value. That in his opinion a large portion of the personal property of the tax payers of said county is omitted from taxation and is not assessed, just how much, he is unable to say.

(Sgd.) Geo. Chamberlain.

Subscribed and sworn to before me, Aaron King, this the — day of —, 1938. (Sgd.) Aaron Kinney. My Commission expires 4-2-39. (Seal Aaron Kinney, Notary Public, Haywood Co., Tenn.)

[fol. 669]

HAYWOOD COUNTY

AFFIDAVIT OF JOHN O. BOMER

John O. Bomer makes oath that he is a resident and citizen of Brownsville, Tennessee, and has been for 40 years or more and is a property owner in Haywood County, Tennessee, and believes he is reasonably familiar with the values of real estate in Haywood County and with the assessments of real estate in said County and that the assessments for State and County taxes are only about fifty per cent of the real value of said property. That he is also reasonably certain that a large portion of the personal property in said County escapes taxation each year. That the custom of the Assessors for many years of assessing real property for taxation in this County has been to assess same at only about fifty per cent of its real value. This no doubt is due to large extent to the fact that in other Counties and generally over the State to the best of affiant's information and belief that real estate has only been assessed at about fifty per cent of its value.

Affiant further states that he is now the President of the Brownsville Bank and has been for a great many years and in this way his opportunities to ascertain the values of real estate in this county has been good. That he also served as

Mayor or President of the Board of Commissioners of the City of Brownsville for the past 12 years.

[fol. 670]

(Sgd.) John O. Bomer.

Subscribed and sworn to before me, J. W. Norris, this the 1 day of July 1938. (Sgd.) J. W. Norris, Notary Public. My commission expires 4-7-40. (Seal J. W. Norris, Notary Public, Haywood County, Tenn.)

[fol. 671]

HAYWOOD COUNTY

AFFIDAVIT OF G. N. ALBRIGHT

Affiant, G. N. Albright, makes oath that he is Clerk and Master of the Chancery Court of Haywood County, Tennessee.

That the 1936 State and County taxes for Haywood County, Tennessee, were filed in his Court for collection; that the total amount of assessed valuation of delinquent 1936 taxes filed in his Court for collection was \$889,016.00; that since said taxes were filed in said Chancery Court there have been collected delinquent taxes on a valuation of \$35,375.00; and there remains delinquent and uncollected the 1936 taxes on a valuation of \$853,641.00, as of this date, July 1st, 1938.

(Sgd.) G. N. Albright, Clerk & Master.

Subscribed and sworn to before me this the 1st day of July 1938. (Sgd.) J. W. Norris, Notary Public. My commission expires 4-7-40. (Seal J. W. Norris, Notary Public, Haywood County, Tenn.)

[fol. 672].

HAYWOOD COUNTY

AFFIDAVIT OF GEORGE W. LYLE

George W. Lyle makes oath that he is the President of the First State Bank of Brownsville, Tennessee, that he has been a resident of Haywood County, Tennessee all his life, and is the owner of real estate in said County. That he believes he is reasonably familiar with the values of real estate in Haywood County, that he is also reasonably

familiar with the assessments of property in Haywood County, and that in his opinion real estate in Haywood County is and has been for many years assessed at only about fifty per cent of its value. That he feels justified in stating that a large per cent of the personal property in this county escapes taxation each year. No doubt one reason for the assessment of real estate at only about fifty per cent of its value is due to the fact that the same rule of assessment obtains in other Counties in this State and has for many years and the Assessor in each County makes the assessments low to meet the assessments and equalize with the assessments of other counties.

(Sgd.) Geo. W. Lyle.

Subscribed and sworn to before me, the 1st day of July 1938. (Sgd.) Sara Madison Taylor, Notary Public. My commission expires Jan. 14, 1941. (Seal Sara Madison Taylor, Notary Public, Haywood County, Tenn.)

[fol. 673] •

HAYWOOD COUNTY

AFFIDAVIT OF CHARLES B. JACOCKS

Said Charles B. Jacocks makes oath that he is Tax Assessor for Haywood County, Tennessee, and has been for the last 10 years and assessed property in said county. That real property in said county for a number of years prior to his incumbency of said office had been assessed at about sixty per cent of its real value and so remained after being passed on by the Board of Equalization of said County. Affiant believes that it is generally true that property throughout the State and in other counties of the State had been assessed at about fifty per cent of its real value. Assessors in one county feel constrained to resort to low valuations and assessments in order to protect the tax payers of such County, so as to equalize the assessments in the different counties, otherwise tax payers in a county where property is assessed at full value would be at a great disadvantage as against other Counties where the valuations were only fifty per cent. That affiant does not know the extent to which personal property has escaped taxation. This is a matter very difficult for any Tax Assessor to get

as the Assessor is not supposed to know and has no means of ascertaining how much personal property a tax payer owns. He can only be governed by what the tax payers state to him in their affidavits.

[fol. 674]

(Sgd.) Chas. B. Jacobs.

Subscribed and sworn to before me, Aaron Kinney, this the 2 day of July 1938. (Sgd.) Aaron Kinney, Notary Public. My commission expires 4-2-39. (Seal Aaron Kinney, Notary Public, Haywood Co., Tenn.)

[fol. 675]

HENDERSON COUNTY

Ratio of
Assessed Value
to Actual Value

Leo Jones,
County tax assessor

Real estate
Low personal assessment account personal exemption and allowing for that assessment is more than for real estate.

66 2/3%

W. G. Frizzell,
Member County Equalization Board

Real estate
Personal property well assessed when exemption considered.

70%

M. H. Stewart,
Member County Equalization Board

Real estate

70%

W. M. Goff,
County Trustee

1936 taxes 4% delinquent.

[fol. 676]

HENDERSON COUNTY

AFFIDAVIT OF LEO-JONES

Personally appeared before me, John A. McCall, a Notary Public, duly qualified, commissioned and acting in and for said State and County, Leo Jones, with whom I am personally acquainted, and who, after being first duly sworn, makes oath and says:

That he is the regularly duly elected and qualified Tax Assessor for Henderson County, Tennessee, and has so been since September 1, 1936; that he is familiar with property in general in Henderson County, Tennessee, and knows or thinks he knows in general the real estate values of realty in Henderson County; that the real estate in Henderson County, Tennessee, is assessed for taxes at about 66 2/3 per

cent of its actual cash value according to the best of affiant's knowledge and belief.

Affiant further states that the personal assessment in Henderson County though apparently very low, is accounted for by reason of the personal exemption allowed residents being deducted from the total personal property actually assessed. Affiant further states that in his opinion the assessment of personal property in Henderson County is very much more according to a percentage of that liable than is the assessment of real estate.

Further affiant saith not.

[fol. 677]

(Sgd.) Leo Jones.

Sworn to and subscribed before me on this July 8, 1938. (Sgd.) John A. McCall, Notary Public. My commission expires 15 day of July 1939. (Seal John A. McCall, Notary Public, Henderson Co., Tenn.).

[fol. 678]

HENDERSON COUNTY

AFFIDAVIT OF W. G. FRIZZELL

Personally appeared before me, Joe A. Appleby, County Court Clerk of Henderson County, Tennessee, W. G. Frizzell, with whom I am personally acquainted, and who, after being first duly sworn, makes oath and says:

That he is a life-long resident citizen of Henderson County, Tennessee, and at present is a member of the Equalization Board of Henderson County, Tennessee, and that he has also served Henderson County, Tennessee, as its Tax Assessor for a period of about ten years, having last served as such Assessor in the year 1932; that he is familiar with both farm property and town real estate in the county and its reasonable values; that in his opinion real estate in Henderson County, Tennessee, is assessed at seventy per cent (70%) of its cash value; that personal property in the county is assessed very well when the exemption of personalty allowed the residents is taken off.

(Sgd.) W. G. Frizzell.

Sworn to and subscribed before me On this July 9, 1938. (Sgd.) Joe A. Appleby, County Court Clerk of Henderson County, Tennessee. (Seal.) County Court Seal, Henderson County, Tenn.)

[fol. 679]

HENDERSON COUNTY

AFFIDAVIT OF M. W. STEWART

Personally appeared before me, Joe A. Appleby, County Court Clerk of Henderson County, Tennessee, M. H. Stewart, with whom I am personally acquainted, and who, after being first duly sworn, makes oath and says:

That he is a member of the present Equalization Board of Henderson County, Tennessee, and has so served at another previous time on said Board; that he is a life long resident of Henderson County, Tennessee, and is acquainted with property values generally both farm property and town real estate in said county; that in his opinion the realty in Henderson County, Tennessee, is assessed at approximately seventy per cent (70%) of it's cash value.

(Sgd.) M. H. Stewart.

Sworn to and subscribed before me on this July 9, 1938. (Sgd.) Joe A. Appleby, County Court Clerk to Henderson County, Tennessee. (Seal County Court Seal, Henderson County, Tenn.)

[fol. 680]

HENDERSON COUNTY

AFFIDAVIT OF W. M. GOFF

Personally appeared before me, Joe A. Appleby, County Court Clerk of Henderson County, Tennessee, W. M. Goff, with whom I am personally acquainted, and who, after being first duly sworn makes oath and says:

That he is the County Trustee of Henderson County, Tennessee, and has so been since September 1, 1932; that he has charge of the tax collections for Henderson County, Tennessee, it being his duty at the proper time to file with an attorney selected for the purpose of filing tax suits on delinquent taxes the delinquent taxes of taxpayers in Henderson County, Tennessee; that he has recently certified to an attorney selected by himself a list of the delinquent 1936 taxes in Henderson County, Tennessee, and said list totals approximately the sum of Forty Four Hundred (\$4400.00) Dollars, which is approximately four per cent (4%) of the total property taxes that should have been

paid for the year 1936 on property assessed in Henderson County, Tennessee.

(Sgd.) W. M. Goff, Trustee.

Sworn to and subscribed before me on this July 9, 1938. (Sgd.) Joe A. Appleby, County Court Clerk to Henderson County, Tennessee. (Seal County Court Seal, Henderson County, Tenn.)

[fol. 681]

HENRY COUNTY

Ratio of
Assessed Value
to Actual Value

W. C. Rainey,
County Trustee

Property 30% to 100% average about
1936 tax 8% to 10% uncollected.
1937 tax 25% uncollected.

60%

Dudley Hurt,
County Tax Assessor

Property 50 to 75 average.
Personalty only small percentage of total assessment.

60%

D. E. Bomar,
Chairman County Board of
Equalization

Property 50 to 75 average.

60%

D. E. Mathis,
Clerk, County Court

1936 autos 3495.
1937 autos 3720.
None assessed for taxation.

[fol. 682]

HENRY COUNTY

AFFIDAVIT OF W. C. RAINEY

W. C. Rainey, being first duly sworn, upon oath, states that he is County Trustee of Henry County, Tennessee, and that property in said County is ordinarily assessed, as shown by the tax records of his office, on a basis varying between thirty per cent and one hundred per cent of the actual value, but, that the average percentage of assessment to actual value will probably be about sixty per cent.

Affiant further states that the percentage of taxes assessed for the year 1936 which remain uncollected is between eight per cent and ten per cent, and that the percentage of taxes assessed for the year 1937 which remain uncollected is approximately twenty-five per cent; and that

the total personal property assessed for taxation in 1936 was \$155,160, and for 1937, \$162,920.

(Sgd.) W.C. Rainey, Trustee.

Sworn to and subscribed before me by W. C. Rainey, this 1st day of July, 1938. (Sgd.) Judson Woods, Notary Public. My commission expires Oct. 8, 1939. (Seal Judson Woods, Notary Public, Henry County, Tenn.)

[fol. 683]

HENRY COUNTY

AFFIDAVIT OF DUDLEY HURT

Dudley Hurt, being first duly sworn, upon oath states, that he is County Tax Assessor for Henry County, Tennessee, and that he has served in that official position since September 1, 1932, and that during and throughout his term of office, property in Henry County, Tennessee, has been assessed on a percentage basis between fifty per cent and seventy-five per cent, and on an average of sixty per cent of its actual value.

Affiant further states that the personalty assessed by him is a small percentage of the total property assessed in said County; and that the total assessed value of personal property for the year 1936 was \$155,160, for the year 1937 \$162,920, and for the year 1938 \$173,140; and that in assessing property for taxation, he has followed generally the practice of his predecessors in office.

Affiant further states that all property assessed by him for the year 1938, and which has been certified by the County Board of Equalization, is as follows: acreage assessment of real estate \$4,662,760; assessments of town lots (real estate) \$3,008,640; and personal property \$173,040—the total of all property assessed by him being \$7,844,440.

(Sgd.) Dudley Hurt.

Sworn to and subscribed before me by Dudley Hurt, this 5th day of July 1938. (Sgd.) Judson Woods, Notary Public. My commission expires Oct. 8, 1939. (Seal Judson Woods, Notary Public, Henry Co., Tenn.)

[fol. 684]

HENRY COUNTY

AFFIDAVIT OF D. E. BOMAR

D. E. Bomar, being first duly sworn, upon oath states, that he is Chairman of the County Board of Equalization for Henry County, Tennessee, and has served as a member of said Board for several terms (about six years), and that during that period of time property in said County has been assessed on a basis varying between fifty per cent and seventy-five per cent of its actual value; and that the average has been about sixty per cent of the actual value.

Affiant further states that the property assessed for the year 1938, as certified by the County Board of Equalization to the County Court of Henry County, Tennessee, which certification was made on June 13, 1938, is as follows: real property acreage assessed at \$4,662,760, town lots (real estate) assessed at \$4,008,640, and personal property in the amount of \$173,040, making a total of all property assessed by the County Tax Assessor for said year, and certified by the County Board of Equalization, of \$7,844,440.

Affiant further states that the assessment of property for the year 1938 as hereinbefore stated is of course exclusive of public utilities.

(Sgd.) D. E. Bomar.

Sworn to and subscribed before me by D. E. Bomar, this 2nd day of July, 1938. (Sgd.) Judson Woods, Notary Public. My commission expires Oct. 8, 1939. (Seal Judson Woods, Notary Public, Henry County, Tenn.)

[fol. 685]

HENRY COUNTY

AFFIDAVIT OF D. E. MATHIS

D. E. Mathis, being first duly sworn, states that he is Clerk of the County Court of Henry County, Tennessee, and that as such he is in possession of the records showing the following facts:

That according to the report of the County Board of Equalization of Henry County, Tennessee, certified on June 30, 1938, and filed with him, which report however, is sub-

ject to correction of errors in the assessment list, property has been assessed in Henry County, for the year 1938, as follows: real estate acreage at \$4,662,760, town lots (real estate) at \$3,008,640, personal property \$174,040, or a total of all property assessed by the County Tax Assessor and certified by the Board of Equalization of \$7,844,440, which is exclusive of assessments against public utilities to be later made and certified by the Railroad and Public Utilities Commission.

That the number of motor vehicles registered in Henry County for the years 1936 and 1937 respectively is as follows: for the year 1936, automobiles 2,985, trucks 443, free licenses 40, taxes 14, motoreycles 5, dealers' license 8—a total of 3,495; for the year 1937, automobiles 3,107, commercial trucks 433, farm trucks 113, motoreycles 6, dealers' license 8, taxes 18, free license 35—a total of 3,720.

It appears from an examination of the tax assessment [fol. 686] list that no automobiles have been assessed during either year for taxation.

(Sgd.) D. E. Mathis.

Sworn to and subscribed before me by D. E. Mathis, this 1st day of July, 1938. (Sgd.) Judson Woods, Notary Public. My commission expires Oct. 8, 1939. (Seal Judson Woods, Notary Public, Henry Co., Tenn.)

[fol. 687]

HUMPHREYS COUNTY

		Ratio of Assessed Value to Actual Value
H. H. Hooper, County Tax Assessor	Real estate Personal property lower.	66 2/3%
J. D. Bone, Member County Equaliza- tion Board	Real estate Only small percent personal property is assessed.	66%
W. N. McCrary, Jr., Member County Equaliza- tion Board	Real estate	65%
W. H. Jones, Magistrate, Member Coun- ty Board of Equalization	Real estate Less personal than real as- sessed for taxation.	65%

[fol. 688]

HUMPHREYS COUNTY

AFFIDAVIT OF H. H. HOOPER

Personally appeared before me, Mack C. Simpson, a Notary Public in and for said state and county, H. H.

Hooper, with whom I am personally acquainted, who states upon oath as follows: that he is the tax assessor for Humphreys County, and has served in said office for the past six years, and it is his duty to make assessments of all real and personal property taxable under the law in Humphreys County, Tennessee, which he has done and does, and that in making assessments, real property in Humphreys County on the average is assessed at approximately 66 $\frac{2}{3}$ per cent of the actual value. That such manner of assessment has been usual in the County for assessing real estate; and due to the difficulty in finding personal property, the assessed valuation of personal property in Humphreys County carries a lower percentage which affiant is not able to definitely name. O

(Sgd.) H. H. Hooper.

Sworn to and subscribed before me on this 8 day of July, 1938. (Sgd.) Mack C. Simpson, Notary Public. My commission expires on 19 day of Jan. 1942. (Seal Mack C. Simpson, Notary Public, Humphreys County, Tenn.)

[fol. 689]

HUMPHREYS COUNTY

AFFIDAVIT OF J. D. BONE

Personally appeared before me, Mack C. Simpson, a Notary Public, in and for said state and county, J. D. Bone, with whom I am personally acquainted, who states upon his oath that he lives in the southern part of Humphreys County in what is known as Cherry Bottom or Buffalo River section, and is a member of the Equalization Board of Humphreys County, and is the owner of a reasonable amount of lands in said county, and from his experience as a private citizen, and from his participation on said Board, he thinks that the real estate in Humphreys County is assessed at approximately 66 per cent of its actual value on the average, and that only a small per cent of the taxable personal property in the county is assessed for taxation.

(Sgd.) J. D. Bone.

Sworn to and subscribed before me on this 7 day of July, 1938. (Sgd.) Mack C. Simpson, Notary Public. My commission expires on 19 day of Jan. 1942. (Seal Mack C. Simpson, Notary Public, Humphreys County, Tenn.)

[fol. 690]

HUMPHREYS COUNTY

AFFIDAVIT OF W. N. McCrary, Jr.

Personally appeared before me, Mack C. Simpson, a Notary Public in and for said state and county, W. N. McCrary, Jr., with whom I am personally acquainted, who states upon his oath that he is a member of the Equalization Board of Humphreys County, and lives in the western part of the county on Tennessee River, in which is known as Big Bottom, and on the said Board represents the second district of said county; that he has lived in Humphreys County all of his life, and from his knowledge and observation of the valuation of land for taxation, and from his experience on said Equalization Board, he is of the opinion that real estate in Humphreys County on the average is assessed at about 65 per cent of its actual value, and that personal property assessed is a small per cent of the amount actually taxable in the county.

(Sgd.) W. N. McCrary, Jr.

Sworn to and subscribed before me on this 7th day of July, 1938. (Sgd.) Mack C. Simpson, Notary Public. My commission expires on 19 day of Jan. 1942. (Seal Mack C. Simpson, Notary Public, Humphreys County, Tenn.)

[fol. 691]

HUMPHREYS COUNTY

AFFIDAVIT OF W. H. JONES

Personally appeared before me, Mack C. Simpson, a Notary Public in and for said state and county, W. H. Jones, with whom I am personally acquainted, who states upon his oath that he lives in the Southeast portion of the county, on Hurricane Creek and was for many years a magistrate in said county and is at present a member of the Equalization Board, and that he owns creek lands and river bottom lands in said county, and he is of the opinion that the lands of Humphreys County are assessed on the average of 65 per cent of the actual value, and the percent-

age of taxable personal property assessed for taxation in said county is less than the real estate.

(Sgd.) W. H. Jones.

Sworn to and subscribed before me on this 8 day of July, 1938. (Sgd.) Mack C. Simpson, Notary Public. My commission expires on the 19 day of June 1942. (Seal Mack C. Simpson, Notary Public, Humphreys County, Tenn.)

[fol. 692]

HICKMAN COUNTY

Ratio of
Assessed Value
to Actual Value

W. J. O'Connell,
County Tax Assessor

Property Assessed 4,708,476
estimated actual value 8,082,-
050.

65%

N. C. & St. L. Ry.'s assess-
ment is out of proportion.

J. H. Barber,
County Trustee

J. H. Barber,
County Trustee

1936 taxes uncollected 15%
1937 " " 20%

Ed Russell,
Cashier, Farmers & Mer-
chants Bank of Centreville
and landowner.

Property
Assessed value 4,708,476. Ac-
tual value 8,082,050 railroad
assessment too high.

66%

[fol. 693]

HICKMAN COUNTY

AFFIDAVIT OF ED RUSSELL

I, Ed Russell, make oath that I am 63 years of age, and that I am cashier of the Farmers & Merchants Bank of Centreville, Tennessee; that I own considerable real estate in Hickman County, Tennessee and feel like I am fully acquainted with the value of said real estate as to its real value and as to the value or basis used as the value of said real estate for taxable purpose; that my judgment and from my knowledge of the assessment against real estate and personal property in Hickman County, Tennessee, I would say that said property in Hickman County, Tennessee, is now assessed for taxable purpose at not over 60% of its actual value; that I am advised and acquainted with the fact, that the tax aggregate for Hickman County, Tennessee, shows a total assessment including real and

personal property in the amount of about \$4,708,476 and that the taxable wealth of Hickman County, Tennessee, as it is estimated and accepted by dealers in county securities as accurate, amounts to \$8,082,050.

I realize that there is only one railroad in Hickman County, Tennessee and that it has been a valuable asset to Hickman County, Tennessee, both in a commercial way and for taxing purpose. I feel like said railroad property in Hickman County, Tennessee is valued too high for tax-[fol. 694] able purpose and that it should be reduced in proportion to other property in Hickman County, Tennessee.

I realize the railroad is having difficult times in conducting their business owing to the economical conditions and I am frank to say I feel like the assessment against the Railroad Company is higher in proportion as compared to that of other real estate in Hickman County, Tennessee for taxable purpose.

This the 13th day of August, 1938.

(Sgd.) Ed Russell.

Sworn to and subscribed before me this the 13 day of August, 1938. (Sgd.) Robert P. Brown, Notary Public. (Seal Robert P. Brown, Notary Public, Hickman County, Tenn.)

AFFIDAVIT OF J. H. BARBER

I, J. H. Barber, make oath that I am the County Trustee, of Hickman County, Tennessee and that I am 58 years of age and that as such Trustee of said County, I have in my office the records showing the assessment made against real estate and personal property in Hickman County, Tennessee; that there remains uncollected for taxes assessed in the year 1936, about 15 per cent of said taxes levied and that for the year 1937, there remains uncollected 20 per cent of said tax levied upon said real estate and personal property for said year 1937.

(Sgd.) J. H. Barber.

Sworn to and subscribed before me this the 13 day of Aug., 1938. (Sgd.) Robert P. Brown, Notary Public. (Seal Robert P. Brown, Notary Public, Hickman County, Tenn.)

[fol. 696]

HICKMAN COUNTY

AFFIDAVIT OF J. H. BARBER

I, J. H. Barber, make oath that I am the duly elected and acting Trustee for Hickman County, Tennessee and that I am 58 years of age.

That the N. C. & St. L. Railroad Company owns property in Hickman County, Tennessee and is assessed for taxes in said county; that I feel like I am familiar with the value and assessment of the property in this county and that the tax aggregate for Hickman County, Tennessee for the year 1937, is as follows:

Acreage assessment	\$3,373,139
Town lots	498,950
Personalty	167,313
Public Utilities	669,740

making a total tax aggregate for said county for the year 1937, \$4,708,476.

That the taxable wealth for Hickman County, Tenn., as has been estimated in general and accepted by dealers in county securities as to be practical accurate, is \$8,820,050, these figures having been relied upon as I understand, by the security dealers in County bonds.

That the property in Hickman County, Tennessee, according to my best figures and information is assessed at only 65 per cent of its actual value.

I further state that while I have nothing to do with the assessment of Public Utilities in Hickman County, Tennessee, and that the same is not made in Hickman County, [fol. 697] but before the Public Utility Commissioners of the State of Tennessee, that said assessment of the N. C. & St. L. Railroad Company is too high. That said Railroad is the only Railroad in Hickman County, Tennessee and it has been in the past, and is now a valuable asset to our county and I feel like it should be equitably assessed in proportion to other property assessment in Hickman County, Tennessee.

This the 13th day of August 1938.

(Sgd.) J. H. Barber.

Sworn to and subscribed before me this the 13 day of August 1938, (Sgd.) Robert P. Brown, Notary Public. (Seal Robert P. Brown, Notary Public, Hickman County, Tenn.)

[fol. 698]

HICKMAN COUNTY

AFFIDAVIT OF W. J. O'GUIN

I, W. J. O'Guin, make oath that I am 57 years of age and I am the duly elected and acting Tax Assessor for Hickman County, Tennessee and that as such Tax Assessor it is my duty to assess the real and personal property in Hickman County, Tennessee; that for the years of 1937, the tax aggregate shows a total assessment as follows:

Acreege Assessments	\$3,373,139
Town Lots	498,950
Personalty	167,313
Public Utilities	669,074
Total	\$4,708,476

I understand and have been informed that the estimate taxable wealth of Hickman County, Tennessee is around \$8,082,050 and this estimation as I am informed is generally accepted by both brokers and dealers in the County Securities as accurate.

I further state that it has been my sole purpose and intention to assess the property in Hickman County, Tennessee, both real and personal in a fair, just and equitable manner, and I have used such discretion as I deem justifiable under the circumstances and made my assessment in accordance with the law the best way I know how, and while the personalty, for the year 1936, assessment in Hickman County is very small, however, this is all the personal property that I have been able to locate for taxing purpose.

[fol. 699] I further state that the property as assessed in Hickman County is assessed at about 65 per cent of its actual value. This is based on the fact, however, that the property values are not as high in this county as they formerly were and upon the further fact that I have tried to make an equitable adjustment since Hickman County has high tax rate and I have done all within my power to hold the property assessment at the lowest figure possible for the tax payers.

I do further state that I am not required, under the law, to assess Public Utilities in Hickman County, Tenn., and that such assessments as I am informed is made by the

Public Utilities Commission of the State of Tennessee. I wish to state further that there is but one Railroad in Hickman County, Tennessee and that is the N. C. & St. Louis Railway Company which traverses Hickman County in a north and south direction. This Railroad has been a great asset to the people in the past and is at present a vital necessity to Hickman County. The Railroad Company has been splendid tax payers and have contributed much toward the operation of the Government in Hickman County, Tennessee.

I feel like that with economical conditions existing as they now do, that the Railroad is paying too much taxes in Hickman County, Tennessee, their assessment being somewhat out of proportion to that of real estate assessment in Hickman County, Tennessee.

[fol. 700] This the 13 day of August, 1938.

(Sgd.) W. J. O'Guin.

Sworn to and subscribed before me this the 13 day of August, 1938. (Sgd.) Robert P. Brown, Notary Public. (Seal Robert P. Brown, Notary Public, Hickman County, Tenn.)

[fol. 701]

LEWIS COUNTY

Ratio of
Assessed Value
to Actual Value

J. N. Floyd,
County Tax Assessor and
for 6 years

Real estate
Only personalty assessed is
that of Hohenwald Bk. & Tr.
Co., 1st Nat. Bk. of Hohen-
wald and Charleston Mining
Co.

75%

B. M. Grimes,
Hardware merchant, Pres.
of 1st Nat. Bk., Chm. of Co.
Bd. of Tax Equalizers,
former County Judge, Land
owner.

Approve tax assessor's assess-
ment except when complaint
is made and then modify by
comparison with other lands
or by reason of new bldgs.,
etc.

Geo. P. Smithurst,
Land owner and dealer in
real estate and has assisted
tax assessor—70 years old
and resident 40 years.

Real estate
No personalty assessed except
that of the two banks in
Hohenwald and Charleston
Mining Co.

65%

Nollie T. Plummer,
County Trustee, landowner
and banker

Real estate
Only personalty assessed was
of 2 banks in Hohenwald and
Charleston Mining Co. On
June 30, 1938 taxes on \$407,-
183.60 of assessment unpaid
and 155,000.00 of 1937 assess-
ment unpaid.

60%

Ratio of
Assessed Value
to Actual Value

W. E. Humphreys,
65 years old and resident 37
years. Clerk and Master
and for 11 years, landowner
and in mill and lumber
business

Real estate
Only personalty of 2 banks at
Hohenwald and Charleston
Mining Co. assessed.

60%

Levi Baker,
County Court Clerk and for
8 years makes up tax books

Only personalty assessed is of
2 banks at Hohenwald and
Charleston Mining Co. $\frac{1}{2}$
itemized."

Jake Fite,
City Recorder, Hohenwald
and for 13 years.

Hohenwald property about
which is higher than assess-
ment of County and State on
same property.

75%

[fol. 702]

Jake Fite,
City Recorder, Hohenwald
and for 13 years.

Filing statement of Bond
Dept. 1st Nat. Bk., Memphis,
showing assessed and actual
value on July 1, 1926.

[fol. 703]

LEWIS COUNTY

AFFIDAVIT OF J. N. FLOYD

Personally appeared before me, Carl F. Edwards, a
Notary Public in and for said County and State, J. N. Floyd,
who makes oath in due form of law to the following state-
ment, to-wit:

"That he is the duly elected and qualified tax assessor for
Lewis County and has held said office for 6 years and is
now acting as such official. He states that in assessing prop-
erty in Lewis County for taxes, he has, in his opinion,
Assessed real estate in said County at about 75 per cent of
its actual or cash value. He further states that it has been
customary to assess property at less than its actual or
cash value, by his predecessors in office, and taking the
County as whole he has increased the assessed value of
Lewis County real estate.

He states that the personalty assessed in Lewis County
is only that of the Hohenwald Bank & Trust Company, The
First National Bank of Hohenwald and the Charleston
Mining Company in the 5th Civil District of Lewis County."

This July 19th, 1938.

(Sgd.) J. N. Floyd, Tax Assessor.

Sworn to and subscribed to before me this July 19th,
1938. (Sgd.) Carl F. Edwards, Notary Public. My
commission expires Feb. 2, 1942. (Seal Carl F.
Edwards, Notary Public, Lewis County, Tenn.)

[fol. 704]

LEWIS COUNTY

AFFIDAVIT OF B. M. GRIMES

Personally appeared before me, Carl F. Edwards, a Notary Public in and for said County and State, B. M. Grimes, with whom I am personally acquainted and who makes oath in due form of law to the following statement, to-wit:

"That he — 45 years old and has been a resident of Lewis County, Tennessee, all his life. That he is a hardware merchant in the town of Hohenwald and President of the First National Bank of said town and was formerly County Judge of Lewis County. He states that he is a property owner in said County and is Chairman of the County Board of Tax Equalizers for Lewis County.

Affiant states that as a member of said Equalization Board he feels that he and the other members thereof are familiar with land values in Lewis County and that they take and accept the assessment of Lewis County lands as given to them by the County Tax Assessor and make no changes in his report except where complaints are made by tax payers and then they equalize or modify his reports by comparison of the complaining party's land value to that of other lands in the same community. Or, they modify or change his report where new buildings have been constructed, etc. Otherwise, the report of the Tax Assessor is not disturbed by the Equalization Board." This July 20, 1938.

[fol. 705]

(Sgd.) B. M. Grimes, Affiant.

Sworn to and subscribed to before me this July 20, 1938. (Sgd.) Carl F. Edwards, Notary Public. My commission expires Feb. 2, 1942. (Seal Carl F. Edwards, Notary Public, Lewis Co., Tenn.)

[fol. 706]

LEWIS COUNTY

AFFIDAVIT OF GEO. P. SMITHURST

Personally appeared before me, Carl F. Edwards, a Notary Public in and for said County and State, George P. Smithurst, with whom I am personally acquainted and who makes oath in due form of law to the following statement, to-wit:

"That he is 70 years old and has been a resident of Lewis County for the past 40 years. He states that he owns Lewis County real estate and it has been a part of his business to deal in real estate in Lewis County as Attorney-in-fact for the owner of a large boundary of land located in said County and who also owns considerable property in the town of Hohenwald.

Affiant states that he knows values of Lewis County real estate and at times has assisted the tax assessor in making out his reports. He states that in his opinion Lewis County real estate, taking the County as a whole, is assessed at about 65 per cent of its actual or cash value.

He further states no personalty in Lewis County is assessed for taxes, except that of the two banks in Hohenwald and the Charleston Mining Company in the fifth district of Lewis County." This July 19th, 1938.

[fol. 707] (Sgd.) Geo. P. Smithurst, Affiant.

Sworn to and subscribed to before me this July 19th, 1938. (Sgd.) Carl F. Edwards, Notary Public. My commission expires Feb. 2, 1942. (Seal Carl F. Edwards, Notary Public, Lewis Co., Tenn.)

[fol. 708]

LEWIS COUNTY

AFFIDAVIT OF NOLLIE T. PLUMMER

Personally appeared before me, D. D. Humphreys, Jr., a Notary Public in and for said County and State, Nellie T. Plummer, with whom I am personally acquainted and who makes oath in due form of law to the following statement, to-wit:

"That he is the active Trustee of Lewis County, Tennessee and has held said office for the past four years. That it is his duty to collect State and County Taxes on Lewis County Real Estate and Personal Property, and therefore knows the assessed value of Lewis County Property as reported by the County Tax Assessor and the assessments as modified by the Tax-Equalization Board for said Lewis County.

Affiant states that he is thirty-five years old and has been a resident of Lewis County all of his life. That prior to his election to the office of Trustee he was engaged in the Bank-

ing Business in Hohenwald, Lewis County. He owns Lewis County Real Estate and has acted as Administrator of several estates and states that his experience as a land owner, Banker and as Trustee, has well acquainted him with property values in Lewis County.

He states that since he has been Trustee, and before he went into said office, Lewis County Property has never been assessed the full amount of its real or cash value, taking the County as a whole. That for the year 1937 the total assessed value of Lewis County property was \$1,775,214.00 and that the real estate included in this tax aggregate is assessed at about sixty (60%) per cent of its real value. The personalty [fol. 709] included in the tax aggregate for the year 1938 only includes that of the two banks in Hohenwald and the Charleston Mining Company in the 5th Civil District of Lewis County. He further states that on June 30th, 1938, the taxes on \$407,183.60 of the assessment has not been paid and approximately \$155,000.00 of the 1937 assessment has not been paid."

This the 20th day of July, 1938.

(Sgd.) N. T. Plummer, Trustee of Lewis County.

Sworn to and subscribed to before me, this the 20th day of July, 1938: (Sgd.) D. D. Humphreys, Jr., Notary Public. My Commission expires the 17th day of January 1942. (Seal D. D. Humphreys, Jr., Notary Public, Lewis Co., Tenn.)

[fol. 710]

LEWIS COUNTY

AFFIDAVIT OF W. E. HUMPHREYS

Personally appeared before me, Carl F. Edwards, a Notary Public in and for said County and State, W. E. Humphreys, with whom I am personally acquainted and who makes oath in due form of law to the following statement, to-wit:

"That he is 65 years old and has been a resident of Lewis County for the past 37 years. That he is Clerk & Master for Lewis County and has held said office for the past 11 years. That he is a land owner of said Lewis County and has for many years been engaged in the mill and lumber business in said Lewis County.

He states that he and his associates have purchased lands in Lewis County for the past several years and that as Clerk & Master it has been his duty to sell many tracts of land in said County under decrees of the Chancery Court. He further states that as Clerk & Master he is familiar with tax assessments, tax rates and land values in said County, and as such official it has been his duty to acquaint himself with land values. Also, delinquent tax suits have been filed in his Court and his experience in handling these suits have further acquainted him with land values.

He states that by his experience and knowledge of land values and tax assessments he is in position to state the percentage of the cash value of Lewis County lands which is assessed for taxes and in his opinion, not over 60 per cent of the actual cash value of Lewis County real estate, taken [fol. 711] as a whole, is assessed for taxes.

He further states that no personalty in Lewis County except that belonging to the Hohenwald Bank & Trust Company and the First National Bank, of Hohenwald, and the Charleston Mining Company in the fifth Civil District of Lewis County, is assessed."

This July 19, 1938.

(Sgd.) W. E. Humphreys, Clerk & Master.

Sworn to and subscribed to before me, this July 19, 1938. (Sgd.) Carl F. Edwards, Notary Public. My commission expires Feb. 2, 1942. (Seal Carl F. Edwards, Notary Public, Lewis Co., Tenn.)

[fol. 712]

LEWIS COUNTY

AFFIDAVIT OF LEVI BAKER

Personally appeared before me, Carl F. Edwards, a Notary Public in and for said County and State, Levi Baker, with whom I am personally acquainted and who makes oath in due form of law to the following statement to-wit:

"That he is the County Court Clerk for Lewis County and has held said office within two months of eight years and that as such Clerk it is a part of his duty to make up the tax books each year for Lewis County.

Affiant states that the tax books for year 1938 have been prepared and are now in his office. That said books show

the assessed value of property in the town of Hohenwald, Tennessee, to be \$295,043.00, and this amount includes personally assessed at \$30,738.00.

He states that the entire assessed value of personalty in Lewis County, including personalty in the town of Hohenwald, amounts to \$32,473.00, and that the only personalty assessed in the entire County and in the town of Hohenwald is in the third and fifth civil districts, and the following are the only assessments of personalty in the entire County to-wit:

Hohenwald Bank & Trust Company	3rd. Dist.	\$13,542.00
First National Bank	" "	17,196.00
Charleston Mining Company	5th "	1,735.00

The tax books from which the above is taken have been approved by the County Tax Assessor and the County Board [fol. 713] of Tax Equalizers. This July 19th, 1938."

(Sgd.) Levi Baker, County Court Clerk, Lewis County.

Sworn to and subscribed to before me, this July 19, 1938. (Sgd.) Carl F. Edwards, Notary Public, Lewis County. My commission expires Feb. 2, 1942. (Seal Carl F. Edwards, Notary Public, Lewis Co., Tenn.)

[fol. 714]

LEWIS COUNTY

AFFIDAVIT OF JAKE FITE

Personally appeared before me, Carl F. Edwards, a Notary Public in and for said County and State, Jake Fite, with whom I am personally acquainted and who makes oath in due form of law to the following statement, to-wit:

That he is the acting City Recorder for the town of Hohenwald, Tennessee and that he has held said office for the past 13 years. That as such official it is a part of his duty to collect city taxes and is therefore familiar with tax assessments for the city of Hohenwald and for Lewis County, as State and County taxes relate to property in the said town of Hohenwald.

He states that in his opinion, property in the town of Hohenwald is taxed at about 75 per cent of its real value

and that the assessment on City property, by the City, is considerably higher than the assessment of the County and State on the same property.

This July 15th, 1938.

(Sgd.) Jake Fite, Recorder for the Town of Hohenwald.

Sworn to and subscribed to before me this July 15th, 1938. (Sgd.) Carl F. Edwards, Notary Public, Lewis County. My commission expires Feb. 2, 1942. (Seal Carl F. Edwards, Notary Public, Lewis Co., Tenn.).

[fol. 715] .

LEWIS COUNTY

AFFIDAVIT OF JAKE FITE

Personally appeared before me, Carl F. Edwards, a Notary Public in and for said County and State, Jake Fite, with whom I am personally acquainted and who makes oath in due form of law to the following statement, to-wit:

"That he is City Recorder for the City of Hohenwald, Tennessee, and that he held said office on August 1, 1926. He states that the attached statement furnished by the Bond Department of the First National Bank, Memphis, Tennessee, was made while he was such Recorder and that since said statement was made many new business houses and dwellings have been constructed in the city of Hohenwald. He further states that the streets of said city have been paved and other city improvements have been made since said statement was issued.

He further states that the assessed value of real estate and personal property in the town of Hohenwald for the year 1938, excluding utilities, as shown on the tax books, is \$325,185.00, and that the County assessment on the same property is \$295,043.00."

This July 20, 1938.

(Sgd.) Jake Fite, Recorder.

Sworn to and subscribed to before me this July 20, 1938. (Sgd.) Carl F. Edwards, Notary Public. My commission expires Feb. 2, 1942. (Seal Carl F. Edwards, Notary Public, Lewis Co., Tenn.).

[fol. 716]

TAX-FREE IN TENNESSEE

Exempt from Federal Income Tax, Including Surtax

\$55,000.00

City of Hohenwald, Tennessee

6% Waterworks-Bonds

Dated August 1st, 1926.

Denomination \$1,000.00

Principal and semi-annual interest payable (August 1st and February 1st) at the Hanover National Bank, New York, N. Y.

Maturities

\$1,000—1931	\$2,000—1936	\$3,000—1941	\$3,000—1946
1,000—1932	2,000—1937	3,000—1942	4,000—1947
1,000—1933	2,000—1938	3,000—1942	4,000—1948
1,000—1934	2,000—1939	3,000—1944	4,000—1949
1,000—1935	2,000—1940	3,000—1945	5,000—1950

Financial Statement

Estimated actual value	\$1,000,000.00
Assessed Value, July 1st, 1926	433,000.00
Total Bonded Debt (This issue only)	55,000.00
Population, 1920-census	742
Present Estimate	1,000

These Bonds were authorized at a special election held in the City of Hohenwald on July 2nd, 1926, by a majority of the voters of the City of Hohenwald, Tennessee, by a ratio of approximately 20 to 1 and are payable from a direct and unlimited ad valorem tax irrevocably levied on all of the taxable property within the city.

Hohenwald is located about 60 miles Southwest of Nashville, the State Capital, and is served as to transportation facilities by the N. C. & St. L. Railway. It is the County Seat of Lewis County and is a thriving progressive town having two banks and a number of business establishments engaged in all of the usual lines of trade.

Lewis County is primarily an agricultural County, well situated in one of the best farming sections of the State of Tennessee. Splendid gravel roads radiate from Hohenwald to all parts of the County.

Legality Approved by: Peck, Shaffer and Williams, Cincinnati, Ohio.

[fol. 717]

LINCOLN COUNTY

R. H. Isom,
Chairman of Board of
Equalization

Real estate
What personal we get

Ratio of
Assessed Value
to Actual Value

66 2/3%
75%

E. F. Dickey,
Tax Assessor

"

R. A. Pitts,
Formerly County Trustee

"

J. C. Archer,
County Trustee

"

[fol. 718]

LINCOLN COUNTY

AFFIDAVIT OF R. H. ISOM

Personally appeared before me, Emma S. Walker, a Notary Public in and for said State and County, R. H. Isom, with whom I am personally acquainted; and who, being duly sworn, deposes and says:

My name is R. H. Isom, and I am Chairman of the Board of Equalization of and for Lincoln County, Tennessee.

We have the general supervision over equalizing taxes in Lincoln County, and tax matters frequently come before us.

It is our endeavor to so equalize the taxes as to make real estate pay on two-thirds of its actual value, and we try to assess personal property at seventy-five per cent of its value, but I doubt whether we get it all or not. Of course, there are instances of over-assessments of real estate, and we are trying to straighten this out as speedily as possible, and put it all on the two-thirds basis.

I was, for four years, Tax Assessor in Lincoln County, and was used as a Deputy to assess the property in certain Districts in Lincoln County for an additional period of eight years:

(Sgd.) R. H. Isom.

Sworn to and subscribed before me, this the 8th day of July, 1938. (Sgd.) Emma S. Walker, Notary Public. My commission as Notary Public expires October 8, 1939. (Seal Emma S. Walker, Notary Public, Lincoln Co., Tenn.)

[fol. 719]

LINCOLN COUNTY

AFFIDAVIT OF E. F. DICKEY

Personally appeared before me, Emma S. Walker, a Notary Public in and for said State and County, E. F. Dickey, with whom I am personally acquainted, and who being duly sworn, makes oath as follows:

My name is E. F. Dickey. I am sixty-two years of age, and was the duly elected and acting Tax Assessor for Lincoln County, Tennessee, for a period of eight years, ending in 1936.

I think I am familiar with tax conditions in Lincoln County.

We, several years ago, had an inflation in the value of farm lands; and some of these old assessments still stand, and they are over-assessments.

The most stable class of property in my county is possibly business houses in the town of Fayetteville, and I know, while Tax Assessor, that it was my endeavor to fix these at as near two-thirds value as I could.

As these assessments on farm values were brought before it and the Board of Equalization they were reduced, as the assessments on some of these farm lands, on account of the conditions aforesaid, was too high.

I know it was my practice while Assessor, if things were left to me, to assess all property at about two-thirds of its worth, including farming property, and I think this has been the general basis of action by my predecessors.

[fol. 720] As to the assessment of personal property, each person, of course, is entitled to deduct \$1,000.00 worth of personal property without the assessment, and as to the balance of personal property I assessed at, say, 75% of its actual value, or I attempted to so assess it.

In short, I feel safe in saying that I endeavored to assess real estate at two-thirds and personal property at three-fourths of its value while I was Tax Assessor.

(Sgd.) E. F. Dickey.

Sworn to and subscribed before me, this the 2nd day of July, 1938. (Sgd.) Emma S. Walker, Notary Public. My commission as Notary Public expires October 8, 1939. (Seal Emma S. Walker, Notary Public, Lincoln Co., Tenn.)

[fol. 721]

LINCOLN COUNTY

AFFIDAVIT OF R. A. PITTS

Personally appeared before me, Emma S. Walker, a Notary Public in and for said State and County, R. A. Pitts, with whom I am personally acquainted, and who, being duly sworn, deposes and says:

My name is R. A. Pitts, and I was County Trustee of Lincoln County for six years, last serving in 1934.

Of course, it was a part of my business to collect the taxes assessed against properties, both real and personal, in Lincoln County, and in short, I was a part of the tax-gathering machine.

I think I am familiar with the basis of assessments on both real and personal property in Lincoln County, and have been assured that the ideal basis towards which the assessment is made on real estate is sixty-six and two-thirds per cent ($66\frac{2}{3}\%$) of its actual value. There are many times when there are over-assessments, and sometimes an under-assessment, but this is the ideal towards which the Board of Equalization and Tax Assessors work, as reflected from the books in my office.

As to personal property, the assessment was about seventy-five per cent (75%) of what property was disclosed to us; but, of course, a great deal of this property is not subject to taxation by the County now, and as parties were entitled to a thousand dollars (\$1,000.00) exemption, it left relative small personal property subject to taxation.

[fol. 722]

(Sgd.) R. A. Pitts.

Sworn to and subscribed before me, this the 8th day of July, 1939. (Sgd.) Emma S. Walker, Notary Public. My commission as Notary Public expires October 8, 1939. (Seal Emma S. Walker, Notary Public, Lincoln Co., Tenn.)

[fol. 723]

LINCOLN COUNTY

AFFIDAVIT OF J. C. ARCHER

Personally appeared before me, Emma S. Walker, a Notary Public in and for said State and County, J. C. Archer, with whom I am personally acquainted, and who, being duly sworn, deposes and says:

That his name is J. C. Archer, and that he is the duly elected, qualified and acting County Trustee of Lincoln County, Tennessee, having been elected in August 1934 and serving ever since that time; that he thinks that he is familiar with the basis of assessments of both real and personal property in said Lincoln County, as a part of his duties consists of the collection of taxes assessed against said properties; that the basis of assessment is, on real estate, two-thirds of actual value, and on personal property, three-fourths of actual value; that this may vary in certain instances, but that the Assessors and the Board of Equalizers work to this end.

As to the extent to which personal property is assessed, will state that all personal property that can be found subject to taxation under the law is taxed, but that each tax payer is entitled to a thousand dollars as exempt.

(Sgd.) J. C. Archer, Trustee.

Sworn to and subscribed before me, this the 8th day of July, 1938. (Sgd.) Emma S. Walker, Notary Public. My commission as Notary Public expires Oct. 8, 1939. (Seal Emma S. Walker, Notary Public, Lincoln Co., Tenn.)

[fol. 724]

MADISON COUNTY

Ratio of
Assessed Value
to Actual Value

H. M. Cartmell, Member County Board of Equalization	Property • Little personalty assessed and that only from taxpayer's voluntary statements.	65%
A. T. Jones, County Trustee and for 8 years, and Dep. Trustee 11 years.	Property Personalty assessments negligible.	60% to 65%
Fenner Phillips, Dept. County Tax Assessor in charge of office	Real estate So little personalty assessed, can't give ratio actual to assessed value.	65% to 75%
J. T. McCutchen, Real estate agent, former member County Board of Equalization	Real estate Farm lands Very little personalty as- sessed ratio hardly worth considering.	65% 50%
L. W. Birmingham, Jr., Landowner	Real estate Very little personalty as- sessed.	65%

		Ratio of Assessed Value to Actual Value
W. P. Moss, City Atty. and Local Coun- sel, N. C. & St. L. Ry.— property owner.	Real estate Personalty assessments nomi- nal.	65%
W. A. Caldwell, Pres., 1st Nat'l Bank, Jack- son	Real estate Little personalty assessed.	65%
J. N. Robinson, Member County Board of Equalization and for 4 years and at different times in past.	Real estate Very little personalty as- sessed.	65%

[fol. 725]

MADISON COUNTY

AFFIDAVIT OF H. M. CARTMELL

My name is H. M. Cartmell. I am a member of the Madison County Board of Equalization, having been a member for a little more than two years, and being Chairman of the Board at the present time. I am a lifelong resident of Madison County and am now and have been for many years thoroughly familiar with property values and assessments of property for taxes in this County.

The County Board of Equalization, like the Tax Assessor, does not try to assess property in this County at its actual or cash value, and we try to equalize all assessments on a basis of 65% of its actual value. That is, property is generally assessed for purposes of taxation at about 65% of its actual or cash value. This is true now and has been true for many, many years.

There is very little personal property assessed, and such assessments as are made come from the voluntary statements by taxpayers which are submitted to the Tax Assessor. I do not know the ratio of assessments of personal property to its actual or cash value, but I understand that those taxpayers who submit personal property for taxation fix its value and practically make their own assessments.

Witness my hand, this the 12th day of July, 1938.

(Sgd.) H. M. Cartmell.

Sworn to and subscribed before me this the 12 day of July, 1938. (Sgd.) Magie Briscoe, Notary Public. My commission expires 2/20/41. (Seal Marie Briscoe, Notary Public, Madison Co. Tenn.)

[fol. 726]

MADISON COUNTY

AFFIDAVIT OF A. T. JONES

I, A. T. Jones, make the following statement:

I am Trustee of Madison County and have held that office for the past eight years. Prior to that time I had been Deputy Trustee for eleven years, having entered the office in 1919. In discharging the duties of the Trustee's Office, I have necessarily become familiar with property values and assessments of property for taxes in Madison County. It is a fact that real estate in Madison County is not assessed at its actual or cash value. Ever since I have been in the Trustee's office, it has been the custom or practice for the Tax Assessor and the Boards of Equalization to assess property for purposes of taxation at approximately 60% to 65% of its actual or cash value, and to equalize real estate assessments in the County on that basis. If there is any difference between city and farm property, I would say that the farm property is assessed on a lower ratio.

I cannot say what the ratio is between actual value and assessed value of personal property, because of the fact that there is very little personal property assessed for taxation in this County. Only a few individuals have any personal property assessed at all, while a number of manufacturing and business concerns do have some personalty assessments. The total of the personal property assessed is so little compared with the personal property that is actually in the County that I consider the personalty assessments negligible.

[fol. 727] Witness my hand, this the 11 day of July, 1938.

(Sgd.) A. T. Jones.

Sworn to and subscribed before me this the 11 day of July, 1938. (Sgd.) Marie Briscoe, Notary Public. My Commission expires 2/20/41. (Seal Marie Briscoe, Notary Public, Madison County, Tenn.)

[fol. 728]

MADISON COUNTY

AFFIDAVIT OF FENNER PHILLIPS

I, Fenner Phillips, make the following statement:

I am Chief Deputy Tax Assessor for Madison County, Tennessee. My father, J. P. Phillips, is the Tax Assessor.

but he has been in ill health for the past year or two and is now unable to attend to business at all. I have practically been in charge of the Tax Assessor's office for the past year or two, and I am in complete charge of the same now. I am a life-long resident of Madison County, as is my father, and I have for many years been familiar with property values and assessments of property for taxes in this County.

We do not assess real estate in Madison County at its actual or cash value. We try to equalize all real estate assessments in the County, both city and farm property, on an equitable basis. My best judgment is that the assessments would average from 65% to 75% of the actual or cash value of the property. There is so little personal property assessed that I could not say what the ratio is between actual value and assessed value with reference to personal property.

My father has been the Tax Assessor for this County for 3 years. The system hereinbefore referred to has prevailed during all the time he has held the office and for many years prior thereto.

[fol. 729] Witness my hand, this the 11th day of July, 1938.
(Sgd.) Fenner Phillips, Dept.

(Sworn to and subscribed before me this the 11 day of July, 1938. (Sgd.) Marie Briscoe, Notary Public. My commission expires 2/20/41. (Seal Marie Briscoe, Notary Public, Madison Co., Tenn.)

[fol. 730]

MADISON COUNTY

AFFIDAVIT OF J. T. McCUTCHEN

My name is J. T. McCutchen. I am a citizen of Jackson, Madison County, Tennessee. I am now and have been for many years in the real estate business. I have at times served on the Madison County Board of Equalization. I am familiar with property values and assessments of property for purposes of taxation in Madison County.

Real estate in this County is assessed for purposes of taxation at approximately 65% of its actual or cash value, and the Tax Assessor, and Board of Equalization, try to equalize real estate assessments on this basis. That is true now, and has been the situation practically as far

back as I can remember. If there is any difference between assessments of city property and farm property, I would say that farm property is assessed on a lower basis, more nearly approximating 50% of its actual value.

Very little personal property is assessed for taxation in this County. So little, in fact, as compared with the amount of personal property actually in the County, that the ratio between actual value and assessed value of personal property is hardly worth considering.

Witness my hand, this the 11th day of July, 1938.

(Sgd.) J. T. McCutchen.

Sworn to and subscribed before me this the 11 day of July, 1938. (Sgd.) Marie Briscoe, Notary Public. My Commission expires 2/20/41. (Seal Marie Briscoe, Notary Public, Madison County, Tenn.)

[fol: 731]

MADISON COUNTY

AFFIDAVIT OF L. W. BIRMINGHAM, JR.

My name is L. W. Birmingham, Jr., and I am a lifelong resident of Jackson, Madison County, Tennessee. I own a number of pieces of real estate in Jackson and Madison County, most of my property being what is known as business property in the City of Jackson. The aggregate assessed value of my property for taxation for the year 1937 was approximately \$_____.

I am naturally interested in tax assessments and have kept up with them and been familiar with them for many years. It is a fact that now, as for many years, real estate in Jackson and in Madison County is not assessed for purposes of taxation at its actual or cash value, but the tax assessments are about 65% of the actual or cash value of the property.

I have no actual knowledge of assessments of personal property in this County, but it is my understanding that very little personal property is assessed at all.

Witness my hand, this the 11th day of July, 1938.

(Sgd.) L. W. Birmingham, Jr.

Sworn to and subscribed before me this the 11 day of July, 1938. (Sgd.) Marie Briscoe, Notary Public. My commission expires 2/20/41. (Seal Marie Briscoe, Notary Public, Madison Co., Tenn.)

[fol. 732]

MADISON COUNTY

AFFIDAVIT OF W. P. MOSS

My name is W. P. Moss, I am a resident of Jackson, Madison County, Tennessee, and have lived there all my life. I have been City Attorney of the City of Jackson since July 1, 1925. I am and have been for some years a property owner. The Charter of the City of Jackson requires that the City adopt the tax assessments of the County of Madison for purposes of taxation by the municipality. I am, therefore, personally and officially familiar with property values and assessments of property for purposes of taxation in Jackson and Madison County.

It has always been the practice of the Tax Assessor of this County, and the different County Boards of Equalization, to assess all real estate for purposes of taxation at about 60% or 65% of the actual or cash value of such property. In isolated instances property might be assessed at its full value and in other cases at considerably less than 60% of its actual value, but the average is now and for many years has been 65%.

There is practically no personal property assessed. Very few individuals turn in a list of personal property, whose statements are taken as to its value, and some manufacturing concerns are assessed with personal property. The aggregate of personal assessments is nominal, considering the amount of personal property actually available for taxation in Jackson and Madison County.

[fol. 733] Witness my hand, this the 13th day of July, 1938.

(Sgd.) W. P. Moss.

Sworn to and subscribed before me this the 13th day of July, 1938. (Sgd.) Marie Briscoe, Notary Public. My Commission expires 2/20/41. (Seal Marie Briscoe, Notary Public, Madison Co. Tenn.)

[fol. 734]

MADISON COUNTY

AFFIDAVIT OF W. A. CALDWELL

My name is W. A. Caldwell, and I am a life-long resident of Jackson, Tennessee. I am President of the First Na-

tional Bank of Jackson, and I have been connected with that institution in one capacity or another for 55 years. I am a property owner, and banking business has necessitated familiarity with assessments of property for taxes in Madison County, methods of assessment, property values, etc., for a number of years.

Real estate is assessed for purposes of taxation in Madison County and in the City of Jackson at about 65% of its actual, cash or market value. Sometimes individual pieces of property might be assessed for more or less, but the average is just about 65%. This is true now and it has been true over a period of many years, under different Tax Assessors and different Boards of Equalization. I know very little about the assessments of personal property, except that there is very little assessed.

Witness my hand, this the 19 day of July, 1938.

(Sgd.) W. A. Caldwell.

Swoen to and subscribed before me this the 20th day of July, 1938. (Sgd.) Marie Briscoe, Notary Public. My commission expires 2/20/41. (Seal Marie Briscoe, Notary Public, Madison Co. Tenn.)

[fol. 735]

MADISON COUNTY

AFFIDAVIT OF J. N. ROBINSON

My name is J. N. Robinson, I have lived in Madison County all my life. I am a member of the Madison County Board of Equalization and have been on that Board for the past four years, and have also been a member of the Board at different times in the past. I am familiar with real estate values in Madison County, and with the method of assessing both real estate and personal property for taxation. Very little personal property is assessed. With respect to real estate, I would say that generally speaking, property is assessed in this County for taxes at about 65% of its actual or cash value. Of course, there will be some individual instances where property might be assessed for its full value, and on the other hand there are a lot of cases where it is not assessed for more

than 30% or 40% of its value. The average is about 65%.
This the 29th day of July, 1938.

(Sgd.) J. N. Robinson.

Sworn to and subscribed before me this the 29th day
of July, 1938. (Sgd.) Marie Briscoe, Notary
Public. My commission expires 2/20/41. (Seal
Marie Briscoe, Notary Public, Madison Co. Tenn.)

[fol. 736]

MARION COUNTY

Ratio of
Assessed Value
to Actual Value

T. H. Martin,
Member 1937 County
Equalization Board

Real estate

70%

W. H. Long,
Member 1937 County
Equalization Board.

Real estate

70%

R. A. Smith,
Member 1937 County
Equalization Board.

Real estate

70%

J. L. Raulston,
Chairman, 1937 County
Equalization Board.

Real estate

70%

[fol. 737]

MARION COUNTY

AFFIDAVIT OF T. H. MARTIN

Before me, the undersigned Notary Public, personally
appeared T. H. Martin, who makes oath that the follow-
ing statements are true, to the best of his knowledge, in-
formation and belief:

I was a member of the Equalization Board for Marion
County in the year 1937 and was, and am, acquainted with
the cash market value of real estate in said county.

It is my opinion that the assessments passed upon by
the Board, and which were adopted and placed upon the
taxbook, reflect about 70% of the actual cash market value
of the real estate of said county.

In fixing our assessments, the board tried to, and I be-

lieve did, assess all property in its jurisdiction at about 70% of its actual cash value.

(Sgd.) T. H. Martin.

Sworn to and subscribed before me this 20 day of July, 1938. (Sgd.) Marie Cross, Notary Public. My commission expires July 18, 1939. (Seal Marie Cross, Notary Public, Marion County, Tennessee.)

[fol. 738]

MARION COUNTY

AFFIDAVIT OF W. H. LONG

Before me, the undersigned Notary Public, personally appeared W. H. Long, who makes oath that the following statements are true, to the best of his knowledge, information and belief:

I was a member of the Equalization Board for Marion County in the year 1937 and was, and am, acquainted with the cash market value of real estate in said county.

It is my opinion that the assessments passed upon by the Board, and which were adopted and placed upon the taxbook, reflect about 70% of the actual cash market value of the real estate of said county.

In fixing our assessments, the board tried to, and I believe did, assess all property in its jurisdiction at about 70% of its actual cash value.

(Sgd.) W. H. Long.

Subscribed and sworn to before me this 20 day of July, 1938. (Sgd.) Olive J. Hornsby, Notary Public. My Commission Expires July 26, 1941. (Seal Olive J. Hornsby, Notary Public, Marion Co. Tenn.)

[fol. 739]

MARION COUNTY

AFFIDAVIT OF R. A. SMITH

Before me, the undersigned Notary Public, personally appeared R. A. Smith, who makes oath that the following statements are true, to the best of his knowledge, information and belief:

I was a member of the Equalization Board for Marion County in the year 1937 and was, and am, acquainted with the cash market value of real estate in said county.

It is my opinion that the assessments passed upon by the Board, and which were adopted and placed upon the taxbook, reflect about 70% of the actual cash market value of the real estate of said county.

In fixing our assessments, the board tried to, and I believe did, assess all property in its jurisdiction at about 70% of its actual cash value.

(Sgd.) R. A. Smith.

Sworn to and subscribed before me this 20 day of July, 1938. (Sgd.) Marie Cross, Notary Public. My Commission Expires July 18, 1939. (Seal Marie Cross, Notary Public, Marion County, Tennessee.)

[fol. 740]

MARION COUNTY

AFFIDAVIT OF J. L. RAULSTON

Before me, the undersigned Notary Public, personally appeared J. L. Raulston, who makes oath that the following statements are true, to the best of his knowledge, information and belief:

I was Chairman of the Equalization Board for Marion County for the year of 1937, and am well acquainted with the cash market value of real estate in Marion County.

In equalizing the taxes for said year, the Board tried to assess all property within its jurisdiction at 70% of its actual cash market value. I believe that the assessments made and placed upon the taxbook are generally about 70% of the actual cash market value of the property in the county.

(Sgd.) J. L. Raulston.

Sworn to and subscribed before me this 18 day of July, 1938. (Sgd.) Marie Cross, Notary Public. My Commission Expires July 18, 1939. (Seal Marie Cross, Notary Public, Marion County, Tennessee.)

[fol. 741]

MARSHALL COUNTY

Ratio of
Assessed Value
to Actual ValuePaul Finley,
County Trustee

Of 1936 taxes 124,630.00 exclusive of utilities, about 10,000.00 uncollected. Of 1937 taxes 132,000.00, exclusive of utilities, on July 1, 1938 have collected 101,800.00.

W. T. Edmondson,
County Judge and former
Chairman of County Court.

Real estate

60%

J. A. Clark,
County Tax AssessorReal estate
Only about 70% of personal
property is assessed.

60%

H. L. Brown,
Real estate agent, 1936 and
1937 member County Board
of Equalization.Real estate
About 70% of personalty is
assessed. Before 1937 not
so much.

60%

[fol. 742]

MARSHALL COUNTY

AFFIDAVIT OF PAUL FINLEY

Affiant, Paul Finley, makes oath and says that he is the Trustee of Marshall County, and has held that position since September, 1936, and that as such Trustee he is in charge of the Tax Books, and collects the taxes for Marshall County.

That for the year 1936 the total taxes on real and personal property in Marshall County amounted to \$124,630, exclusive of utilities. Of this amount there has been collected all except about \$10,000 (I have not the exact figures).

For the year 1937 the total tax for real and personal property in Marshall County amounts to \$132,000, exclusive of utilities; and of this amount I have up to this date collected \$101,800.00.

(Signed) Paul Finley.

Subscribed and sworn to before me this July 1, 1938. (Sgd.) Bessie Loyd, Notary Public. (Seal Bessie Loyd, Notary Public, Marshall Co., Tenn.)

[fol. 743]

MARSHALL COUNTY

AFFIDAVIT OF W. T. EDMONDSON

Affiant, W. T. Edmondson, makes oath and says that he is County Judge of Marshall County and has held this

position for about four (4) years, and prior to that time he was Chairman of the County Court of Marshall County for about four (4) years, and that he has had occasion to be more or less familiar with state and county assessment of property, both personal and real, in Marshall County for some years.

That in his opinion, generally speaking, real estate in Marshall County is assessed at about sixty per cent (60%) of its actual value. I do not feel myself qualified to speak as to the taxation of personal property.

According to the report of the Board of Equalization for Marshall County for 1938, the assessments are as follows:

Aereage assessment	\$4,415,980.00
Personalty	443,535.00
Town Lots	1,250,295.00
Total	<u>\$6,109,810.00</u>

This July 1, 1938.

(Sgd.) W. T. Edmondson.

Subscribed and sworn to before me this July 1, 1938. (Sgd.) Bessie Loyd, Notary Public. (Seal Bessie Loyd, Notary Public, Marshall County.)

[fol. 744]

MARSHALL COUNTY

AFFIDAVIT OF J. A. CLARK

Affiant, J. A. Clark, makes oath and says that he is at present County Tax Assessor for Marshall County, and has held this position since September, 1937. That in his opinion he is fairly acquainted with the values of real and personal property in Marshall County, and has actually made an effort to assess the same for the last two years.

That at present and for some years prior to this time, in his opinion, he thinks that real estate is assessed at about sixty (60) per cent of its actual value throughout the County, and that he has made an effort to assess the personal property in Marshall County, and in his opinion he thinks that

at this time about seventy (70%) per cent of the personal property in Marshall County is assessed for taxation.

(Sgd.) J. A. Clark.

Subscribed and sworn to before me this July 1, 1938.

(Sgd.) Bessie Loyd, Notary Public. (Seal Bessie Loyd, Notary Public, Marshall Co., Tenn.)

[fol. 745]

MARSHALL COUNTY

AFFIDAVIT OF R. L. BROWN

Affiant, R. L. Brown, makes oath and says that he is now and has been engaged in the real estate business in Lewisburg, Tennessee, for the last five (5) years, and as such he thinks he knows the approximate value of real estate in Marshall County.

That he has served on the Board of Equalization for Marshall County for the years 1936 and 1937, and that in his opinion, the real estate as a whole in Marshall County is assessed at about sixty per cent (60%) of its actual value.

As to the personal property, in my opinion about seventy per cent (70%) of the personal property in Marshall County is assessed for taxation. Prior to 1937, it was not assessed so much, but under our present assessor, the assessment on personal property has been raised materially.

(Sgd.) R. L. Brown.

Subscribed and sworn to before me this July 1, 1938.

(Sgd.) Bessie Loyd, Notary Public. (Seal Bessie Loyd, Notary Public, Marshall Co., Tenn.)

[fol. 746]

MAURY COUNTY

Ratio of
Assessed Value
to Actual Value

R. L. Hayes,
Member County Board of
Equalization

Real estate

60%

Lee Atkeisson,
Member County Board of
Equalization

Real estate

60%

L. Z. Turpin,
Atty., Pres. Maury County
Trust Co., landowner, ap-
praiser for mortgage loans.

Real estate

50%

		Ratio of Assessed value to Actual Value
E. H. Ayers, Exec. V. Pres., Commerce Union Bank	Real estate	60%
S. O. Thomas, Real estate agent and ap- praiser	Real estate	60%
R. S. Hopkins, Atty. and landowner	Real estate	60%
G. P. Brownlow, Real estate agent and loan appraiser	Real estate	50% to 60%

[fol. 747]

MAURY COUNTY

AFFIDAVIT OF R. L. HAYS

Personally appeared before me, W. H. Wilson, a Notary Public in and for Maury County, Tennessee, the undersigned, R. L. Hays, who being duly sworn deposes as follows:

That he has lived in Maury County all of his life; that he is a member of the Board of Equalization for Maury County, Tenn.; that he is familiar with the value of real estate in this county and with the basis of assessment of such property, and in his judgment the basis of assessment does not exceed (60) sixty per cent of the actual cash value.

(Sgd.) R. L. Hays.

State of Tennessee, Maury County.

Subscribed and sworn to before me this July 5, 1938.

(Sgd.) W. H. Wilson, Notary Public. (Seal W.

H. Wilson, Notary Public, Maury Co., Tenn.)

[fol. 748]

MAURY COUNTY

AFFIDAVIT OF LEE ATKEISSON

Personally appeared before me, W. O. Witherspoon, County Court Clerk, in and for said State and County, the undersigned, Lee Atkeisson, who being duly sworn deposes as follows:

That he has lived in Maury County all of his life; that he is a member of the Board of Equalization for Maury County, Tennessee; that he is familiar with the value of real estate in this County and with the basis of assessment of such property, and in his judgment the basis of assessment does not exceed sixty (60) per cent of the actual cash value.

(Sgd.) Lee Atkeisson.

Subscribed and sworn to before me this July 6, 1938.

(Sgd.) W. O. Witherspoon, Clerk, County Court,
(Seal, Maury County Court, Columbia, Tenn.)

[fol. 749]

MAURY COUNTY

AFFIDAVIT OF L. Z. TURPIN

Before me, the undersigned Notary Public in and for the County and State aforesaid, personally appeared L. Z. Turpin, who made oath as follows:

That he has been a practicing attorney at Columbia, Tennessee, for about twenty-five (25) years, and that he has been President of the Maury County Trust Company, a fiduciary corporation, located at Columbia, Tennessee, for about five (5) years; that he was reared on the farm in said county, engaged in farming several years before the beginning of the practice of law, and has been the owner of considerable real estate, both farm lands and city property, for many years; that in dealing in real estate himself, in representing clients dealing in real estate, and also in acting as appraiser for a number of individuals and companies, including the Maury County Trust Company, in connection with mortgage loans, this affiant believes that he is familiar with real estate values in said county.

That in the same connections above mentioned this affiant has made it a part of his business to examine the tax books from year to year to ascertain whether or not the properties owned by him, by his clients, and those covered by mortgage loans, have been assessed in line with other similar properties in said county, and with such experience, he believes that he is familiar with the basis on which the tax assessments on real estate are made in said county.

Affiant further states that it is his opinion, based on knowledge and information gained as above stated, that the

assessments on real estate in said county heretofore and now have been based on about 50% of the actual cash value of the properties at the time the assessments were made.

(Sgd.) L. Z. Turpin.

Subscribed and sworn to before me this the 6th day of July, 1938. (Sgd.) Dorothy L. Robinette, Notary Public. My commission expires Jan. 12, 1942. (Seal Dorothy L. Robinette, Notary Public, Maury County, Tenn.)

[fol. 751]

MAURY COUNTY

AFFIDAVIT OF E. H. AYERS

Before, the undersigned Notary Public in and for the County and State aforesaid, personally appeared E. H. Ayers, who made oath as follows:

That he is the Executive Vice President of the Commerce Union Bank, at Columbia, Tennessee; that he has been actively engaged in the banking business in said County for about thirty-two years (32), first, with the Spring Hill Bank, at Spring Hill, Tennessee, and second, for the past thirteen (13) years, with the Commerce Union Bank; that he has owned, bought and sold, both for himself individually and for said Bank, considerable real estate in said county, and in order to properly conduct such banking business it has been necessary for him to handle many mortgages on a large number of tracts and parcels of land and to appraise the values of such real estate in connection with said business; and by reason of the foregoing facts, he considers himself familiar with real estate values generally in said county.

That in connection with the tax assessments and the payment of taxes on lands owned by this affiant individually, lands owned by said bank, and lands given as security to said bank, this affiant has given attention to the basis on which the assessments have been made, and he states in his opinion and to the best of his knowledge and belief the usual and customary assessments on real estate made in said [fol. 752] county have been and are now based on approxi-

mately 60% of the reasonable market values at the time of the making of such assessments.

(Sgd.) E. H. Ayers.

Subscribed and sworn to before me this the 6th day of July, 1938. (Signed) Dorothy L. Robinette, Notary Public. My commission expires Jan. 12, 1942. (Seal Dorothy L. Robinette, Notary Public, Maury County, Tenn.)

[fol. 753]

MAURY COUNTY

AFFIDAVIT OF S. O. THOMAS

Personally appeared before me, W. H. Wilson, a Notary Public in and for said State and County, S. O. Thomas, who is personally known to me, and who being duly sworn says:

His name is S. O. Thomas, age 62 years, resident of Columbia, Tennessee.

Affiant further states that he was born and reared in Maury County, Tennessee, and has always lived here, and has been engaged in the real estate business for about thirty years; that he has been frequently called on by corporations and individuals to appraise the value of real estate in this County; that he has good knowledge of such values, and that in his judgment the real estate in this County is assessed at not more than (60) sixty per cent of its actual cash value.

(Sgd.) S. O. Thomas.

Subscribed and sworn to before me, this July 6, 1938.

(Sgd.) W. H. Wilson, Notary Public. (Seal W. H. Wilson, Notary Public, Maury Co., Tenn.)

[fol. 754]

MAURY COUNTY

AFFIDAVIT OF R. S. HOPKINS

Personally Appeared before me, W. H. Wilson, Notary Public in and for said state and county, R. S. Hopkins, who is personally known to me, and who being duly sworn says:

His name is R. S. Hopkins; age 62; resident of Columbia, Tennessee; by profession he is an attorney.

Affiant further says that he has lived in Maury County since 1902 and owns and has owned real estate in said County since 1906.

Affiant further says he believes he is reasonably familiar with the assessed valuation of real estate in Maury County, Tennessee, and that he verily believes that said real estate is not assessed for more than sixty per cent of its actual cash value. Affiant is speaking of the assessment of the County as a whole and not of any particular tract or parcel of land.

(Sgd.) R. S. Hopkins.

Subscribed and sworn to before me this the 5th day of July, 1938. (Sgd.) W. H. Wilson, Notary Public. My commission expires: August 4th, 1940. (Seal W. H. Wilson, Notary Public, Maury Co., Tenn.)

[fol. 755]

MAURY COUNTY

AFFIDAVIT OF GIRARD BROWNLOW

I, Girard Brownlow, make oath that soon after my return from the world war I engaged in the real estate business in Columbia, Maury County, Tennessee; that I have quite a large experience in valuing real estate in Maury County; that I have represented insurance companies and other concerns often in appraising real estate, and that in my judgment the real estate in this county is assessed on the basis of fifty to sixty per cent of its actual cash value.

(Sgd.) Girard Brownlow.

Sworn to and subscribed before me, this July 6, 1938.

(Sgd.) W. H. Wilson, Notary Public. (Seal W. H. Wilson, Notary Public, Maury Co., Tenn.)

[fol. 756]

ORION COUNTY

		Ratio of Assessed Value to Actual Value
Clint Adams, Deputy Tax Assessor	Real estate	65%
Garrett Pruett, County Trustee	Real estate	65%
J. A. Hefley, County Judge	Property	65% to 70%
J. F. Semones, Jr., County Court Clerk	Property	65%

[fol. 757]

OBION COUNTY

AFFIDAVIT OF CLINT ADAMS

I, Clint Adams, make oath and say that I am Deputy Tax Assessor for Obion County, Tennessee; that I am familiar generally with real estate values in Obion County, Tennessee, as well as the valuation of such real estate for tax purposes; that in my opinion real estate generally in Obion County, Tennessee, is assessed for the purpose of taxation at approximately 65 per cent of its actual value.

(Sgt.) Clint Adams.

Subscribed and sworn to before me this 6th day of July, 1938. (Sgd.) Fenner Heathcock, Notary Public. My commission expires Jan. 15, 1942. (Seal Fenner Heathcock, Notary Public, Obion County, Tenn.)

[fol. 758]

MAURY COUNTY

AFFIDAVIT OF GARRETT PRUETT

I, Garrett Pruett, make oath and say that I am Trustee for Obion County, Tennessee; that I am generally familiar with real estate values in Obion County, Tennessee, as well as the valuations of such property for tax purposes; that in my opinion property generally in Obion County, is assessed for the purpose of taxation at about 65 per cent of its actual value.

(Sgd.) Garrett Pruett.

Subscribed and sworn to before me on this 7th day of July, 1938. (Sgd.) Fenner Heathcock, Notary Public. My commission expires: Jan. 15, 1942. (Seal Fenner Heathcock, Notary Public, Obion County, Tenn.)

AFFIDAVIT OF J. A. HEFLEY

I, J. A. Hefley, County Judge of Obion County, Tennessee, make oath and say that I am familiar generally with the actual values of property in Obion County, Tennessee, as well as the assessed value thereof for the purpose of taxation; that in my opinion the property generally in

Obion County, is assessed for the purpose of taxation at approximately 65 to 70 per cent of its actual cash value.

(Sgd.) J. A. Hefley.

Subscribed and sworn to before me this August 1, 1938. (Sgd.) Fenner Heathcock, Notary Public. My commission expires: January 15, 1942. (Seal Fenner Heathcock, Notary Public, Obion County, Tenn.)

[fol. 760]

OBION COUNTY

AFFIDAVIT OF J. F. SEMONES, JR.

I, J. F. Semones, Jr., County Court Clerk of Obion County, Tennessee, make oath and say that I am familiar generally with the actual values of property in Obion County, Tennessee, as well as the assessed value thereof for the purposes of taxation; that in my opinion the property generally in Obion County, is assessed for the purpose of taxation at approximately 65 per cent of its actual cash value.

(Sgd.) J. F. Semones, Jr.

Subscribed and sworn to before me this August 1, 1938. (Sgd.) Fenner Heathcock, Notary Public. My commission expires: January 15, 1942. (Seal Fenner Heathcock, Notary Public, Obion County, Tenn.)

[fol. 761]

RUTHERFORD COUNTY

Ratio of
Assessed Value
to Actual Value

Jas. D. Richardson, Local Counsel, N. C. & St. L. Ry.	6,500 autos which @ 200.00 equals \$1,300,000.00 while total personalty assessment is \$413,749.00.	
Mrs. J. L. Dillon, County Tax Assessor	Real estate	60%
Mrs. J. O. Abernathy, Dept. County Court Clerk	Real estate	60%
J. D. Jacobs, Former chairman and secre- tary County Board of Equalization	Property	60%
J. N. Winfree, County Trustee	Real estate 1936 uncollection 20,343.97.	65%
T. A. Jamison, Secy. County Board of Equalization	Real estate	60%

[fol. 762]

RUTHERFORD COUNTY

AFFIDAVIT OF JAMES D. RICHARDSON

I, the undersigned, James D. Richardson, a member of the Murfreesboro Bar, (and local attorney for the N. C. & St. L. Railway), make oath to the following statement:

I have examined the records of the County Court Clerk and find that there are 6500 automobiles registered in Rutherford County. I presume that these cars would certainly be worth on the market \$300.00 each. However, placing their actual cash value at only \$200.00 each, this would amount to \$1,300,000.00.

The total personalty assessment is \$413,749.00. Therefore, it is apparent that not only are two-thirds of the automobiles of Rutherford County not assessed for taxation at all, but if the other one-third are assessed, the result is, that not a single stock, bond, bank account, or any other obligation comprising personal property is assessed for one penny in Rutherford County.

From the foregoing, of course, it is apparent that practically speaking, not one dollar is paid by any citizen of Rutherford County for any personal property of any character which he possesses, except, as stated, the aggregate of \$413,749.00, representing one-third of the value of all the automobiles in the County valued at \$200.00 each.

(Sgd.) Jas. D. Richardson.

Sworn to and subscribed before me, this the 7th day of July, 1938. (Sgd.) Elizabeth W. Martin, Notary Public. Com. expires Apr. 1, 1939. (Seal.)

[fol. 763]

RUTHERFORD COUNTY

AFFIDAVIT OF MRS. J. L. DILLON

I, the undersigned, Mrs. J. L. Dillon, Tax Assessor of Rutherford County, Tennessee, hereby state that in my judgment, real estate in Rutherford County, Tennessee, is not assessed at more than 60% of its actual value.

(Sgd.) Mrs. Josh L. Dillon.

Subscribed and sworn to before me, this July 7, 1938. (Sgd.) Mrs. J. O. Abernathy, Deputy Clerk County Court. (Seal Rutherford County Court, Tennessee.)

[fol. 764]

RUTHERFORD COUNTY

AFFIDAVIT OF MRS. J. O. ABERNATHY

I, the undersigned, Mrs. J. O. Abernathy, Deputy Clerk of the County Court of Rutherford County, Tennessee, hereby state that in my judgment real estate in Rutherford County, Tennessee, is not assessed at more than 60% of its actual value.

(Sgd.) Mrs. J. O. Abernathy.

Subscribed and sworn to before me, This July 7, 1938. (Sgd.) J. D. Richardson, Notary Public. (Seal James D. Richardson, Notary Public, Rutherford Co. Tenn.)

[fol. 765]

RUTHERFORD COUNTY

AFFIDAVIT OF J. D. JACOBS

Personally appeared before me, the undersigned authority, J. D. Jacobs, who makes oath, that in the years gone by he has been both Chairman and Secretary of the Rutherford County Board of Equalization; that for the past twenty-five years the rule has been to assess property in Rutherford County at about 60% of its value.

I have been a citizen of Murfreesboro all of my life and have no interest of any character in this matter, and am making this affidavit at the request of Mr. James D. Richardson and I have not the slightest idea of what he proposes doing with the affidavit, as he did not tell me.

It is hardly necessary, therefore, for me to say that I have no interest in whatever matter this affidavit may be used.

(Sgd.) J. J. Jacobs.

Sworn to and subscribed before me, this the 11th day of July, 1938. (Sgd.) Elizabeth W. Martin, Notary Public. (Seal Elizabeth W. Martin, Notary Public. Com. Expires Apr. 1, 1939. Rutherford County, Tenn.)

[fol. 766]

RUTHERFORD COUNTY

AFFIDAVIT OF J. W. WINFREE

Personally appeared before me, the undersigned authority, J. W. Winfree, Trustee of Rutherford County, Tenn., who makes oath that in his judgment, real estate is assessed in Rutherford County at about sixty-five (65%) per cent of its actual value.

The uncollected taxes in said County for the year 1936 amounted to \$20,343.97.

(Sgd.) J. W. Wilcox, Trustee of Rutherford County, Tenn.

Sworn to and subscribed before me, this July 11, 1938.

(Sgd.) J. D. Richardson, Notary Public. (Seal James D. Richardson, Notary Public, Rutherford Co. Tenn.)

[fol. 767]

RUTHERFORD COUNTY

AFFIDAVIT OF T. A. JAMISON

Personally appeared before me, the undersigned authority, T. A. Jamison, Sec. of the Equalization Board of Rutherford County, who makes oath that in his judgment real property in Rutherford County is assessed ordinarily at 60% of its actual value, and that this was the case during the year 1937.

(Sgd.) T. A. Jamison.

Sworn to and subscribed before me, this the 11th day of July, 1938. (Sgd.) J. D. Richardson, Notary Public. (Seal James D. Richardson, Notary Public, Rutherford Co. Tenn.)

[fol. 768]

WARREN COUNTY

Ratio of
Assessed Value
to Actual Value

P. N. Moffitt, County Judge	Real and personal	70%
J. E. Curtis, Co-Trustee and Tax Col- lector	Real and personal	70%
Jesse Green, Dep. Trustee and Tax Col- lector	Real and personal	70%
Felix Womack, Member County Tax Equal- ization Board	Real and personal	70%
S. T. Millican, Member County Tax Equal- ization Board	Real and personal	70%
Alton Davenport, Member County Tax Equal- ization Board	Real and personal	70%
Joe Kirby, Tax Assessor	Real and personal	70%

[fol. 769]

WARREN COUNTY

AFFIDAVIT OF P. N. MOFFITT

The affiant, P. N. Moffitt, after being duly sworn, deposes and says:

That he is the County Judge of Warren County, and is familiar with the assessment of real and personal property in said county for the purposes of taxation, and that the assessment of such property in said county for tax purposes is approximately on the basis of 70 per cent of the real, actual or cash value, and that the practice of assessing the property has prevailed in said county for many years.

(Sgd.) P. N. Moffitt.

Sworn to and subscribed before me, this the 6 day
of July, 1938. (Sgd.) Ethel Eaton. (Seal Ethel
Eaton, Notary Public, Warren County, Tenn.)

[fol. 770]

WARREN COUNTY

AFFIDAVIT OF J. E. CURTIS

The affiant, J. E. Curtis, after being duly sworn, deposes and says:

That he is Trustee and Tax Collector of Warren County, Tennessee, and is familiar with the tax assessment of real and personal property in said county, and that said property is assessed on a basis of approximately 70 per cent. of the real, actual or cash value of the property, and that this practice has prevailed in said county for several years.

(Sgd.) J. E. Curtis.

Sworn to and subscribed before me, this the 6 day of July, 1938. (Sgd.) Ethel Eaton, Notary Public.
(Seal Ethel Eaton, Notary Public, Warren County, Tenn.)

[fol. 771]

WARREN COUNTY

AFFIDAVIT OF J. C. GREEN

The affiant, Jesse Green, after being duly sworn, deposes and says:

That he is the Deputy Trustee and Tax Collector of Warren County, and has been for several years, and that the assessment of real and personal property in said county for tax purposes is approximately on the basis of 70 per cent. of the real, actual or cash value, and this practice has prevailed in said county for many years.

(Sgd.) J. C. Green.

Sworn to and subscribed before me, this the 6 day of July, 1938. (Sgd.) Ethel Eaton, Notary Public.
(Seal Ethel Eaton, Notary Public, Warren County, Tenn.)

[fol. 772]

WARREN COUNTY

AFFIDAVIT OF FELIX WOMACK

The affiant, Felix Womack, after being duly sworn, deposes and says:

That he is a member of the Tax Equalization Board of Warren County, and in equalizing the tax assessments of

real and personal property in said county, that the Board of which he is a member followed the rule as nearly as they could, by equalizing taxation on the basis of 70 per cent of the real, actual or cash value of the property, and that this practice has prevailed in this county for several years.

(Sgd.) Felix Womack.

Sworn to and subscribed before me, this the 6 day of July, 1938. (Sgd.) Ethel Eaton, Notary Public.
(Seal Ethel Eaton, Notary Public, Warren County, Tenn.)

[fol. 773]

WARREN COUNTY

AFFIDAVIT OF S. T. MILLICAN

The affiant, S. T. Millican, after being duly sworn, deposes and says:

That he is a member of the Tax Equalization Board of Warren County, and in equalizing the tax assessment of real and personal property in said county, that the Board of which he is a member followed the rule as nearly as they could, by equalizing taxation on the basis of 70 per cent of the real, actual or cash value of the property, and that this practice has prevailed in this county for several years.

(Sgd.) S. T. Millican.

Sworn to and subscribed before me, this the 9 day of July 1938. (Sgd.) Ethel Eaton. (Seal Ethel Eaton, Notary Public, Warren County, Tenn.)

[fol. 774]

WARREN COUNTY

AFFIDAVIT OF ALTON DAVENPORT

The affiant, Alton Davenport, after being duly sworn, deposes and says:

That he is a member of the Tax Equalization Board of Warren County, and in equalizing the tax assessment of real and personal property in said county, that the Board of which he is a member followed the rule as nearly as they could, by equalizing taxation on the basis of 70 per cent of the real, actual or cash value of the property, and

that this practice has prevailed in this county for several years.

(Sgd.) Alton Davenport.

Sworn to and subscribed before me, this the 9 day of July, 1938. (Signed) Ethel Eaton, Notary Public. (Seal Ethel Eaton, Notary Public, Warren County, Tenn.)

[fol. 775]

WARREN COUNTY,

AFFIDAVIT OF JOE KIRBY

The affiant, Joe Kirby, after being duly sworn, deposes and says:

That he is the Tax Assessor of Warren County, Tennessee, having held this office for the past three years, and in making the assessment of real and personal property in said county for tax purposes, that he has followed the practice of his predecessor in office, by assessing said property on a basis of 70 per cent of the real, actual or cash value, and this practice has prevailed in this county for a period of many years.

(Sgd.) Joe Kirby.

Sworn to and subscribed before me, this the 12 day of July, 1938. (Sgd.) Ethel Eaton, Notary Public. (Seal Ethel Eaton, Notary Public, Warren County, Tenn.)

[fol. 776]

WEAKLEY COUNTY

T. A. Lewis,
V. Pres. Weakley County
Bank

Real and personal

Ratio of
Assessed Value
to Actual Value

60% to 70%

Jack Jolley,
County Tax Assessor

Real and personal

75%

[fol. 777]

WEAKLEY COUNTY

AFFIDAVIT OF T. A. LEWIS

Personally appeared before me, C. S. Jeter, a notary public in and for the state and county aforesaid, T. A.

Lewis, who makes oath that he is a resident of Dresden, Weakley County, Tennessee, and has been a resident of Weakley County for many years, and is active vice-president of The Weakley County Bank, a banking institution with offices and chief place of business at Dresden, Tennessee.

Affiant further makes oath that he is acquainted with the values of real and personal property situated in Weakley County as vice-president of The Weakley County Bank has handled the sale of both town and farm property owned by the bank.

He further makes oath that Real estate in Weakley County is not assessed for taxation for the years 1937 and 1938 for more than sixty to seventy per cent of its actual cash value and neither is personal property assessed on a higher basis.

Affiant further states that it is common knowledge and has been for many years that real and personal property are not assessed at its actual cash value in Weakley County but that the assessed value is usually from sixty to seventy per cent of the actual cash value.

[fol. 778]

(Sgd.) T. A. Lewis.

Subscribed and sworn to before me this 6th day of July, 1938. (Sgd.) C. S. Jeter, Notary Public. My commission expires the 18 day of Nov. 1941. (Seal C. S. Jeter, Notary Public, Weakley County, Tenn.)

[fol. 779]

WEAKLEY COUNTY

AFFIDAVIT OF JACK HOLLEY

Personally appeared before me, C. S. Jeter, a notary public in and for the state and county aforesaid, Jack Holley who makes oath that he is tax assessor for Weakley County, Tennessee, and has held said position continuously since the First Monday in September, 1932. Affiant further makes oath that he is acquainted with the values of real and personal property in Weakley County and that real estate and personal property in said county have not been assessed for more than seventy-five (75%) per cent of its actual cash value for the years 1937 and 1938. While some property in Weakley County may be assessed at more than

75% of its actual cash value and some property assessed at much less than 75% of its actual cash value yet the property as a whole in Weakley County is not assessed at more than 75% of its actual cash value.

(Signed) Jack Jolley.

Subscribed and sworn to before me this July 6th, 1938. (Sgd.) C. S. Jeter, Notary Public. My commission expires the 18 day of Nov. 1941. (Seal C. S. Jeter, Notary Public, Weakley County, Tenn.)

[fol. 780]

WHITE COUNTY

J. S. Broom,
County Trustee

Real estate
Of 1936 taxes of \$106,268.57,
of which utilities have paid
31,859.96, on Feb. 28, 1938,
\$9,953.68 remained uncol-
lected.

Ratio of
Assessed Value
to Actual Value

50% to 70%

Joe E. McPeak,
County Tax Assessor

Real estate if sold at private
sale on time.

50% to 75%

[fol. 781]

WHITE COUNTY

AFFIDAVIT OF J. S. BROOM

I, J. S. Broom, Trustee of White County, Tennessee, make the following statement under oath according to the best of my knowledge, information and belief, with reference to the assessment and collection of taxes in said County:

In my judgment, real estate in White County is assessed at from 50 to 70 per cent of its real value. As I understand, such valuation is recognized and accepted by all of the county officials and is common knowledge of the public at large.

The tax aggregate for the year 1936, that is, the amount of taxes due to be paid on the assessment for that year, was \$106,268.57, of which \$31,859.96 was due from and has been paid by various public utilities. When the taxes were certified to the Circuit Court Clerk for collection on Febru-

ary 28, 1938, \$2,953.68 of said taxes remained uncollected.

This the 9th day of July, 1938.

(Sgd.) J. S. Broom, Trustee White County.

Subscribed and sworn to before me, this the 9th day of July, 1938. (Sgd.) Malcolm C. Hill, Notary Public. (Seal Malcolm C. Hill, Notary Public, White County, Tenn.)

[fols. 782-783]

WHITE COUNTY

AFFIDAVIT OF JOE E. McPEAK

I, Joe E. McPeake, Tax Assessor for White County, Tennessee, being first duly sworn makes the following statement under oath:

I have been Tax Assessor for White County for about six years and in performing the duties of this office I have attempted to equalize the assessment of real estate on the basis of 50% to 75% of its actual value, that is, I try to base the assessment on what the property would bring at a public sale but not a forced sale, and consider that as the actual cash value as distinguished from the price it would bring if sold on time. I have considered that property would bring at a public sale for cash something like 50 to 75 per cent of what it would if sold at private sale on time.

This July 9th, 1938.

(Sgd.) Joe E. McPeak, Tax Assessor for White County.

Subscribed and sworn to before me, this July 9, 1938.

_____. (Seal Malcolm C. Hill; Notary Public, White County, Tenn.)

[fol. 784] EXHIBIT No. 16 TO BILL OF EXCEPTION³

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

Re—Tennessee Assessment

1938-1939

SECOND AFFIDAVIT OF WM. R. POWDER

[fol. 785] Wm. R. Powder, a citizen and resident of Nashville, Tennessee, makes oath as follows:

As Executive Secretary of the Tennessee Taxpayers Association I have heretofore made and executed my affidavit, dated July 21, 1938, incorporating the section of the Second Annual Report of the Tennessee Taxpayers Association dealing with "Assessment of Taxes," and attesting the verity of the statements therein made, and of the import and results shown in a tabulation; pages 41-44 inclusive of said Second Annual Report, setting out the ratio of assessed values to actual values of property in the several counties of Tennessee; which pages are made an exhibit to my said affidavit.

I attach hereto as an exhibit to and a part of this affidavit mimeographed sheets numbered 1 to 7 inclusive, setting out the ratio of the assessed value of property in the several counties and cities of Tennessee, together with the respective tax rates and percentages of the 1936 property tax remaining uncollected; all of which have been compiled for the purpose of compilation in the Third Annual Survey of the Tennessee Taxpayers Association, soon to be published.

The information contained in the attached exhibit was accumulated and compiled in the same manner and by the same means as the similar information set out and verified by my said former affidavit, and this affidavit is made supplementary to my former affidavit, in order that the information and investigation available for the most recent date may be added to and considered with the statistical tables and conclusions included in my said former affidavit. I have personally supervised the obtaining and compilation of the several county and city ratios contained in the attached exhibit, and said exhibit correctly states and sets out the result of the investigations conducted by the Associa-

tion; all of which are true and accurate, to the best of my knowledge, information and belief.

While this affidavit is made at the request of counsel for The Nashville, Chattanooga & St. Louis Railway, for presentation to and consideration by the State Board of Equalization in connection with the assessment of the property of that Railway for the biennium 1938-1939, the exhibit was prepared for the Third Annual Report of the Association, as stated, and not at the instance of or for the benefit of the said Railway.

Wm. R. Poudar, Sworn to and subscribed before me at Nashville, Tennessee on this 31 day of October, 1938. F. W. Boeckman, Notary Public. My commission expires 5/10/39.

Comparison of Assessed and Actual Values of Taxable Property in 95 Counties of the State of Tennessee

Third Annual Survey Conducted

By Tennessee Taxpayers Association

County	Estimated Actual Value	Assessed Value 1937	Assessed Value Per Cent of Actual	County Tax Rate	1936 Property Tax Uncollected	
					Date	Per Cent.
Anderson.....	\$11,294,685	\$6,776,801	60%	\$2.62	Not available	
Bedford.....	18,240,200	9,120,100	50%	1.47	3-31-37	31.5%
Benton.....	5,145,163	3,087,098	60%	1.95	Not Available	
Bledsoe.....	5,113,190	2,556,595	50%	2.86	6-30-38	16.1%
Blount.....	22,934,576	17,200,933	75%	1.97	3-31-38	4.7%
Bradley.....	17,305,320	10,383,195	60%	2.23	12-31-37	7.4%
Campbell.....	23,286,620	5,821,655	25%	4.08	12-31-37	10.1%
Cannon.....	5,526,496	2,763,248	50%	1.90	3-31-37	19.2%
Carroll.....	13,737,720	8,242,754	60%	2.03	3-31-38	15.4%
Carter.....	25,728,610	7,718,583	30%	3.89	3-31-38	22.3%
Cheatham.....	5,450,953	3,270,572	60%	1.92	Not Available	
Chester.....	4,559,790	2,735,874	60%	2.15	12-31-37	12.7%
Clairborne.....	14,550,351	4,850,117	33-1/3%	3.47	12-31-37	21.1%
Clay.....	3,495,226	1,747,613	50%	2.62	12-31-37	12.2%
Coke.....	12,241,388	7,344,833	60%	2.52	3-31-38	8.1%
Coffee.....	7,282,292	4,733,490	65%	1.70	3-31-37	29.5%
Crockett.....	11,184,570	5,592,285	50%	1.77	12-31-37	20.8%
Cumberland.....	6,092,884	3,046,442	50%	2.92	12-31-37	29.0%
Davidson.....	359,324,890	251,527,425	70%	1.00	9-30-37	8.5%
Decatur.....	3,803,936	1,901,968	50%	2.40	12-31-37	15.2%
DeKalb.....	5,421,252	2,710,626	50%	1.92	12-31-37	19.6%
Dickson.....	8,029,713	4,817,828	60%	2.29	12-31-37	18.0%
Dyer.....	26,774,048	12,048,322	45%	2.52	12-31-37	23.4%
Fayette.....	15,236,954	7,618,477	50%	2.32	12-31-37	15.1%
Fentress.....	6,261,377	2,504,514	40%	3.67	12-31-37	23.3%
Franklin.....	19,401,367	9,506,646	49%	1.57	3-31-37	19.6%

Gibson	31,542.030	15,771.025	50%	2.30	3-31-38	10.3%
Giles	12,032.000	12,619.560	60%	1.77	3-31-37	28.8%
Grainger	5,256.341	3,153.805	60%	2.17	2-13-38	19.9%
Greene	26,737.310	16,054.386	60%	2.27	3-31-38	0.6%
Grundy	4,346.634	2,173.317	50%	2.75	12-31-37	38.5%
Hamblen	13,180.781	7,908.470	60%	1.82	12-31-37	14.1%
Hamilton	228,194.403	136,916.762	60%	1.76	5-31-37	18.0%
Hancock	3,738.162	1,869.086	50%	1.92	3-31-37	24.0%
Hardeman	9,861.380	6,409.903	65%	3.07	12-31-37	16.9%
Hardin	5,425.402	3,526.515	65%	2.27	12-31-37	23.7%
Hawkins	19,689.516	6,563.172	33-1/3%	1.82	3-31-38	12.1%
Haywood	14,936.862	7,468.431	50%	2.01	12-31-37	18.0%
Henderson	9,251.785	3,700.714	40%	2.92	12-31-37	20.9%
Henry	16,505.100	9,903.060	60%	2.24	3-31-38	9.9%

[fol. 788]

Hickman	\$7,819.256	\$4,691.554	60%	\$2.12	12-31-37	16.7%
Houston	3,370.420	2,022.251	60%	1.90	Not Available	
Humphreys	7,650.563	4,590.338	60%	1.90	Not Available	
Jackson	4,469.550	2,234.775	50%	2.50	12-31-37	11.0%
Jefferson	12,551.526	7,530.916	60%	2.42	12-31-37	15.9%
Johnson	5,309.907	1,769.969	33-1/3%	3.22	3-31-38	23.7%
Knox	208,787.660	125,272.398	60%	1.46	6-30-38	10.1%
Lake	7,293.020	5,105.114	70%	1.74	3-31-38	4.0%
Lauderdale	17,953.412	8,976.706	50%	2.50	3-31-38	7.3%
Lawrence	14,525.220	8,715.132	60%	2.22	12-31-37	20.6%
Lewis	2,975.890	1,775.114	60%	2.28	12-31-37	15.4%
Lincoln	13,611.308	10,208.481	75%	1.76	3-31-37	42.9%
Loudon	11,702.643	7,021.586	60%	1.87	5-31-38	7.0%
McMinn	17,129.714	8,564.857	50%	3.22	3-31-38	4.6%
McNairy	6,582.120	4,278.380	65%	2.85	3-31-38	30.8%
Macon	3,891.776	2,918.831	75%	1.52	Not Available	
Madison	40,950.760	26,617.861	65%	1.72	12-31-37	15.4%
Marion	18,364.428	9,182.214	50%	2.17	12-31-37	17.2%
Marshall	13,184.620	7,910.775	60%	2.07	3-22-37	30.3%
Maury	29,961.160	17,976.696	60%	1.44	3-31-37	20.3%
Meigs	2,933.700	1,173.481	40%	2.65	3-31-38	17.9%

EXHIBIT TO AFFIDAVIT—Continued

Comparison of Assessed and Actual Values of Taxable Property in 95 Counties of the State of Tennessee

Third Annual Survey Conducted

By Tennessee Taxpayers Association

County	Estimated Actual Value	Assessed Value 1937	Assessed Value Per Cent of Actual	County Tax Rate	1936 Property Tax Uncollected	
					Date	Per Cent
Monroe	11,945,920	7,167,552	60%	2.67	3-31-38	8.0%
Montgomery	22,456,200	13,473,748	60%	1.72	12-31-37	14.4%
Moore	1,116,943	1,116,663	65%	1.97	12-31-36	31.8%
Morgan	6,551,551	4,586,086	70%	3.02	12-31-37	20.9%
Obion	19,132,218	14,349,164	75%	1.74	3-31-38	6.2%
Overton	5,146,774	2,573,387	50%	2.45	12-31-37	32.0%
Perry	3,672,260	1,468,906	40%	1.65	12-31-37	19.2%
Pickett	1,634,788	817,394	50%	2.68	12-31-37	22.8%
Polk	27,858,812	13,929,406	50%	1.82	3-31-38	3.2%
Putnam	12,578,630	6,289,315	50%	2.32	6-30-38	14.1%
Rhea	11,347,930	5,673,965	50%	2.87	3-31-38	17.3%
Roane	13,366,800	9,220,080	60%	3.01	12-31-37	18.4%
Robertson	22,522,406	13,513,444	60%	1.64	12-31-37	14.2%
Rutherford	27,294,080	16,376,448	60%	1.61	Not Available	
[fol. 789]						
Scott	\$8,610,270	\$4,305,135	50%	\$3.12	12-31-37	8.4%
Sequatchie	3,354,010	1,677,005	50%	1.92	3-31-37	44.0%
Sevier	6,668,220	4,001,913	60%	3.17	3-31-38	3.5%
Shelby	402,441,364	301,739,022	75%	.88	5-31-37	19.4%
Smith	12,986,956	6,493,478	50%	1.55	12-31-37	9.2%
Stewart	3,817,170	2,290,305	60%	2.15	Not Available	
Sullivan	80,990,889	26,996,963	33-1/3%	1.92	3-31-38	6.0%
Sunshine	22,207,833	13,324,700	60%	1.58	Not Available	
Tipton	18,077,642	9,038,821	50%	2.67	3-31-38	11.7%
Trussdale	4,237,710	2,542,627	60%	1.70	Not Available	

Union	11,151,594	3,903,058	35%	3.32	3-31-38	11.3%
Union	5,325,292	1,331,323	25%	2.22	3-31-38	9.4%
Van Buren	2,520,000	1,260,000	50%	1.47	3-31-37	47.7%
Warren	9,452,310	6,616,617	70%	1.42	3-31-37	19.0%
Washington	41,459,478	20,729,739	50%	1.90	2-28-38	11.3%
Wayne	4,125,028	2,475,017	60%	2.42	12-31-37	14.9%
Weakley	18,212,760	10,927,654	60%	1.80	3-31-38	10.4%
White	7,728,718	4,637,231	60%	2.35	12-31-37	12.3%
Williamson	24,043,662	15,628,381	65%	1.39	Not Available	
Wilson	21,957,853	13,174,718	60%	1.17	Not Available	
Grand Total Estimated Actual Value	\$2,407,755,061					
Grand Total Assessed Value		\$1,465,853,131				
Assessed Value Is Percentage of Actual, Averaged			60.8%			

Average Assessed Valuation for the entire state of 60.8% of the estimated actual value. Average Tax Rate for the 95 counties \$2.21 per \$100.00.

The County Tax Rates:

High	\$4.08 Campbell County
Low	\$0.88 Shelby County
Average	\$2.21 All Counties

Davidson County's 1937 tax rate, applicable only to property inside the City of Nashville, was 75c per \$100.00. This is the lowest tax rate used by any county in the state.

EXHIBIT TO AFFIDAVIT—Continued

Cities and Towns

Comparison of Assessed and Actual Values of Taxable Property (cont'd.)

In Cities and Towns of the State of Tennessee

Third Annual Survey of Local Government Conducted

By Tennessee Taxpayers Association

City or Town	Tax Levy Year	Estimated Actual Value	Assessed Value	Assessed Value Per Cent of Actual	Town Tax Rate	1936 Property Tax Uncollected Date	Per Cent
Adamsville	1937	\$276,000	\$173,560	63%	\$1.25	Not Available	
Alamo	1937	687,196	343,598	50%	2.20	3-28-38	34.7%
Alcoa	1937	5,21,084	3,908,314	75%	1.74	9-30-37	58%
Algood	1937	284,080	142,040	50%	1.00	Not Available	
Arlington	1932	Not Avail.	200,000	Approx. Not Avail.	1.00	Not Available	
Athens	1937	3,922,390	1,568,955	40%	4.00	4-30-38	11.7%
Ashland City	1937	389,003	233,402	60%	1.00	Not Available	
Bell Buckle	1937	380,000	190,000	Approx. 50%	1.25	Not Available	
Bells	1937	760,000	497,000	66%	2.25	Not Available	
Bethel Springs	1935	183,333	110,000	60%	1.00	Not Available	
Bluff City	1937	1,008,561	336,187	33-1/3%	1.95	Not Available	
Bolivar	1937	632,803	424,322	65%	2.00	12-31-37	35.3%
Bradford	1937	400,000	200,000	50%	1.25	Not Available	
Bristol	1937	15,264,328	7,632,164	50%	2.25	4-30-38	11.5%
Brownsville	1937	3,220,258	1,610,129	50%	2.50	1-10-38	15.2%
Bruceston	1937	689,464	344,732	50%	1.50	6-30-37	80.9%
Butler	1935	341,310	170,655	50%	1.30	Not Available	
Camden	1937	524,480	314,688	60%	1.00	6-30-37	40.0%
Carthage	1937	974,050	487,025	50%	1.75	12-31-37	24.0%
Centerville	1937	915,037	549,034	60%	1.00	12-31-37	10.6%
Chapel Hill	1937	Not Avail.	125,000	Not Avail.	.40	Not Available	
Chattanooga	1937	221,059,454	110,529,727	50%	2.00	9-30-37	11.15%
Clarksville	1937	10,606,166	6,363,700	60%	Various	12-31-37	18.2%
Cleveland	1937	7,497,970	4,498,776	60%	2.16	3-31-38	8.4%

Clinton.....	1937	1,668,228	1,000,937	60%	2.50	12-31-37	7.7%
Coal Creek.....	1937	1,522,212	380,553	25%	3.00	12-31-37	20.2%
Columbia.....	1937	7,748,963	5,424,274	70%	1.65	12-31-37	14.6%
Cookeville.....	1937	3,331,100	2,115,526	66%	1.25	3-31-38	8.7%
Collierville.....	1937	993,610	496,805	50%	1.25	Not Available	
Copperhill.....	1937	907,490	453,745	50%	1.60	12-31-36	68.1%
Covington.....	1937	2,828,224	2,121,170	75%	1.75	3-31-38	15.5%
Crossville.....	1937	779,854	389,927	50%	2.90	12-31-37	31.0%
Dandridge.....	1937	244,830	146,895	60%	1.00	Not Available	
Dayton.....	1937	1,071,660	642,999	60%	2.00	12-31-37	24.2%
Decaturville.....	1937	400,000	200,000	50%	.60	Not Available	
Decherd.....	1937	879,504	439,752	50%	1.35	Not Available	
Dickson.....	1937	1,885,523	1,131,314	60%	1.95	12-31-37	27.0%
Dresden.....	1937	721,100	432,662	60%	2.15	3-31-38	30.1%
Dyer.....	1937	1,065,430	532,715	50%	2.00	4-30-37	26.5%
Dyersburg.....	1937	7,245,725	4,347,435	60%	1.50	12-31-37	14.2%
[fol. 791]							
East Brainerd.....	1937	\$362,250	\$217,350	60%	\$1.00	Not Available	
East Ridge.....	1937	2,590,538	1,295,269	50%	.14	Not Available	
Elizabethton.....	1937	7,334,288	4,400,573	60%	2.00	3-31-38	21.7%
Englewood.....	1937	600,000	300,000	50%	1.00	12-31-36	32.4%
Erin.....	1937	385,972	231,583	60%	1.25	Not Available	
Erwin.....	1937	3,894,898	1,947,449	50%	2.50	3-31-38	12.0%
Etowah.....	1937	3,254,680	813,670	25%	4.00	11-30-37	32.2%
Fayetteville.....	1937	3,102,118	2,047,398	66%	1.90	12-31-37	18.0%
Franklin.....	1937	4,076,072	2,649,447	65%	1.20	12-31-37	12.5%
Friendship.....	1937	312,000	156,000	50%	2.25	Not Available	
Gainesboro.....	1937	331,250	165,625	50%	1.00	Not Available	
Gates.....	1937	204,987	122,992	60%	1.25	Not Available	
Gallatin.....	1937	2,659,898	1,595,939	60%	1.65	12-31-37	10.2%
Germanatown.....	1937	277,500	185,000	66-2/3%	.80	Not Available	
Gleason.....	1937	561,532	280,766	50%	1.20	Not Available	
Gordonsville.....	1937	202,062	101,031	50%	.80	Not Available	
Grand Junction.....	1937	*207,692	200,000	65%	1.00	Not Available	
Greenbrier.....	1937	400,000	200,000	50%	1.50	Not Available	

EXHIBIT TO AFFIDAVIT—Continued

Cities and Towns

Comparison of Assessed and Actual Values of Taxable Property (cont'd.)

In Cities and Towns of the State of Tennessee

Third Annual Survey of Local Government Conducted

By Tennessee Taxpayers Association

City or Town	Tax Levy Year	Estimated Actual Value	Assessed Value	Assessed Value Per Cent of Actual	Town Tax Rate	1936 Property Tax Uncollected Date	Per Cent
Greeneville.....	1937	5,993,443	4,495,082	75%	2.25	3-31-38	8.2%
Greenfield.....	1937	745,050	447,029	60%	2.70	3-31-38	12.5%
Halls.....	1937	1,296,420	777,854	60%	2.00	2-15-38	20.3%
Harriman.....	1937	2,963,750	2,371,000	80%	2.60	12-31-37	14.1%
Hartsville.....	1937	960,000	480,000	50%	.50	Not Available	
Henderson.....	1937	1,164,000	582,000	60%	2.40	Not Available	
Henning.....	1937	517,798	258,899	50%	1.75	Not Available	
Henry.....	1937	147,190	88,319	60%	.75	Not Available	
Hohenwald.....	1937	611,190	366,718	60%	1.40	Not Available	
Hollow Rock.....	1937	137,740	68,870	50%	.55	Not Available	
Humboldt.....	1937	2,774,750	1,942,325	70%	2.25	12-31-37	34.0%
Huntingdon.....	1937	1,006,646	601,000	60%	1.25	Not Available	
Jackson.....	1937	21,795,840	14,167,300	65%	1.73	12-31-37	12.8%
Jamestown.....	1937	750,000	300,000	40%	.75	Not Available	
Jefferson City.....	1937	1,334,871	800,923	60%	1.83	12-31-37	18.0%
Jellico.....	1937	1,212,964	606,482	50%	2.25	12-31-37	29.6%
Jonesboro.....	1937	848,404	424,202	50%	3.00	4-13-38	13.1%
Johnson City.....	1937	23,983,333	10,792,507	45%	2.70	3-31-38	12.9%
Kenton.....	1937	670,000	400,000	60%	1.50	Not Available	
Kingsport.....	1937	21,668,757	14,084,682	65%	2.15	12-31-37	5.8%
Kingston.....	1937	311,550	186,930	60%	1.75	Not Available	
Knoxville.....	1937	460,000,000	126,694,201	79%	2.65	6-30-37	19.7%

Cities and Towns

Comparison of Assessed and Actual Values of Taxable Property (cont'd.)

In Cities and Towns of the State of Tennessee

Third Annual Survey of Local Government Conducted

By Tennessee Taxpayers' Association

City or Town	Tax Levy Year	Estimated Actual Value	Assessed Value	Assessed Value Per Cent of Actual	Town Tax Rate	1936 Property Tax Uncollected Date	Per Cent
Oakdale	1937	367,663	257,364	70%	1.50	Not Available	
Obion	1937	1,468,428	367,107	25%	1.50	3-31-38	20.4%
Oliver Springs	1937	436,000	218,000	50%	1.00	Not Available	
Oneida	1937	1,464,930	439,479	30%	2.13-1/2	12-31-37	8.5%
Paris	1937	4,992,769	2,989,682	60%	1.75	3-31-38	16.0%
Parsons	1937	386,904	193,452	50%	2.50	Not Available	
Petersburg	1937	556,000	278,000	50%	1.65	Not Available	
Portland	1937	779,982	467,977	60%	1.75	Not Available	
Pulaski	1937	3,063,250	1,347,800	44%	2.40	3-31-37	63.2%
[fol. 793]							
Ridgely	1937	8656,160	\$426,500	65%	\$1.75	3-31-38	33.7%
Ripley	1937	2,139,020	1,387,566	65%	2.50	3-31-38	7.8%
Rives	1937	354,136	177,068	50%	1.20	Not Available	
Rockwood	1937	2,089,300	1,253,580	60%	2.00	12-31-37	39.3%
Rogersville	1937	1,450,000	580,000	40%	3.65	2-19-38	24.6%
Rutherford	1937	463,330	278,000	60%	2.00	Not Available	
Saulsbury	1937	107,700	70,000	65%	1.80	Not Available	
Savannah	1937	693,290	415,974	60%	.75	12-31-37	14.7%
Selmer	1937	609,920	396,452	65%	1.30	4-8-38	11.2%
Sevierville	1937	799,850	479,910	60%	1.90	3-31-38	16.8%
Sharon	1937	385,340	231,204	60%	1.50	Not Available	
Shelbyville	1937	4,496,512	2,248,256	50%	2.00	12-31-37	17.7%
Signal Mtn.	1937	2,153,840	1,400,000	65%	1.20	5-31-37	29.0%

Smithville	1937	392,000	196,000	50%	1 42-1/2	Not Available
Somerville	1937	814,698	407,349	50%	12-31-37	2 5%
South Fulton	1937	554,867	416,150	75%	3-31-38	15 7%
So. Pitts-burgh	1937	2,132,768	1,066,384	50%	12-31-37	27 5%
Sparta	1937	1,617,185	970,311	60%	12-31-37	17 3%
Spring City	1937	778,530	389,265	50%	3-31-37	26 8%
Springfield	1937	5,866,910	2,933,455	50%	12-31-37	8 6%
Stanton	1937	361,062	180,521	50%	Not Available	
Sweetwater	1937	1,769,560	1,061,739	60%	5-31-38	2 9%
Tiptonville	1937	862,172	646,628	75%	3-31-38	7 9%
Toone	1937	166,160	108,000	65%	Not Available	
Trenton	1937	2,146,134	1,073,067	50%	1-14-38	12 8%
Trezevant	1937	382,000	191,000	50%	Not Available	
Trimble	1937	416,660	250,000	60%	Not Available	
Troy	1937	159,580	127,660	80%	Not Available	
Tulahoma	1937	1,958,046	1,272,720	65%	12-31-37	17 0%
Union City	1937	4,259,708	3,194,783	75%	1-20-38	16 0%
Wartrace	1937	731,766	365,883	50%	Not Available	
Watertown	1937	739,840	443,904	60%	6-30-37	36 3%
Waverly	1937	995,100	597,000	60%	Not Available	
Waynesboro	1937	329,750	197,850	60%	Not Available	
Westmoreland	1934	186,942	112,165	60%	Not Available	
White Bluff	1937	311,080	186,649	60%	Not Available	
Whiteville	1937	439,000	285,354	65%	Not Available	
Winchester	1937	2,469,998	1,234,999	50%	12-31-37	34 0%
Woodbury	1937	359,234	179,617	50%	Not Available	
Grand Total Estimated Actual Value		\$1,316,157,033				
Grand Total Assessed Value			\$874,195,656			

Grand Total Estimated
Actual Value

\$1,316,157,033

Memo: Some Municipalities use the County Tax Assessors Values;
Others have their own values made.

Grand Total
Assessed Value

\$874,195,656

Average Assessed Valuation for these 160 Cities and Towns is 66.4% of the estimated actual value. Average Tax Rate \$1.71 per \$100.00. Municipal Tax Rates vary from a high of \$4.00 for Athens and Etowah in McMinn County to a low of 14 cents for East Ridge.

[fol. 793-A] EXHIBIT NO. 18 TO BILL OF EXCEPTIONS

BRIEF OF THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

[fol. 793-1] BEFORE THE RAILROAD AND PUBLIC UTILITIES
COMMISSION OF TENNESSEE

In Re: Assessment of The Nashville, Chattanooga & St.
Louis Railway, 1938-1939

Brief of The Evidence

I

General Statement Re. System Value

As a taxpayer The Nashville, Chattanooga & St. Louis Railway recognizes that mathematical accuracy in valuation and assessment is not practically possible. It recognizes also the complex and difficult task imposed upon the Railroad and Public Utilities Commission in arriving at a valuation of the several great railroad systems operating in Tennessee. But the very magnitude of the task emphasizes Tennessee, as a basis of allocating values to the state for the necessity that fundamental rules of valuation be stated and followed by the Commission for its own guidance and for the information and protection of the railroad taxpayer.

In the past the effect of excessive valuation and assessment of railroads has meant merely a diminution of profits, [fol. 793-2] and dividends, and sometimes a difference only between good dividends and better dividends. Such a situation no longer exists. A heavier responsibility now rests upon the railroad assessor. The industry is threatened with financial paralysis, and the primary interest of the management is not dividends. It is concerned that the property produce enough of revenue to enable it to be operated with efficiency and safety, without subsidy and without bankruptcy, and that whatever value it has may be preserved and not destroyed.

The Nashville, Chattanooga & St. Louis Railway occupies an important place in the economies of Tennessee. It sells transportation service to the public at rates fixed by governmental authority. Its largest expense item is made up of payrolls at rates dictated by governmental "mediators."

The territory it serves does not provide sufficient traffic, freight or passenger, to meet the expense of a first class railroad, and it is enabled to operate only by the fact that the efficiency of its operation enables it to secure competitive traffic which otherwise would move over other available routes or go by other modes of transportation. Its fixed charges, interest and rentals, are ten percent of its revenues, while the average for the nation's railroads is fifteen percent. Its net profits for ten years of operation have failed by more than \$2,000,000 to equal its tax bill; and the net result of seven years of operation are: (1) efficient transportation for the public at rates lower than for any similar period; (2) \$4,023,609 for the public treasuries in taxes; and [fol. 793-3] (3) for the owners of its capital stock a net loss or deficit of \$2,708,959.

It is sometimes difficult to identify the straw which breaks the camel's back; but ad valorem taxation in Tennessee is a weighty impost on this Railway. Applying the average county tax rate of \$4.22 and the state rate of \$.08 to the assessment tentatively reported will create a tax bill for 1938 of \$486,000, and municipal rates will carry the total well over half a million dollars. The proof indicates a certain corporate deficit for the year, the amount of which will be measured in large part by the result of the final assessment to be fixed by this Commission, as in the preceding three bienniums.

Not in the interest of the stock owner alone, but for the preservation of this railroad system in the public interest, do we appeal to this Commission for a reexamination of the evidence of value and a substantial reduction in its assessment. Professor James C. Bonbright, noted authority on taxation, of Columbia University, addressing the 1937 session of the National Tax Association, expressed "concern" that the tax bill of the railroads is too high "as compared to the total taxes of their strongest rivals, the motor carriers using the public highways." If this "grossly unsportsmanlike discrimination" against the railroads should be removed by increasing the taxes on motor carriers, said Professor Bonbright, there would remain the fact that "property taxes, when levied against utility companies at [fol. 793-4] high rates, must necessarily deter these companies from improving their properties in the best interest of the public." National Tax Association, 1937 Proceedings, page 217. Professor Bonbright was arguing against

the wisdom of ad valorem taxation of public service properties, but his arguments emphasize the importance of fair valuation and the responsibility of the assessor of such properties in the public interest.

In 1875, the Supreme Court of Tennessee expressly recognized that the taxable value of a railroad "must be ascertained by its actual, and not its speculative profits, or its mere capacity for productiveness; as it must be taxed at its value when assessed, and not what might be its value if under better management." *L. & N. R. Co. v. State*, 55 Tenn. 663, 797. The present net profits, while a very important element for ascertaining present value, said the Court, "should not be the absolute standard value." There should be taken, in connection with it, the inquiry—"What would a prudent man give for the property as a permanent investment, with a view to its present and future income?" But the rule by which such prudent investor would be guided was quoted by the Court from an Illinois decision (27 Ill. 64) thus:

" * * * No prudent purchaser of such property would neglect in the first instance, to look at the income the property yields, so that he might thereby, judge what profits he might in the future reasonably expect from its investment. To ascertain what he might safely give for the property, no doubt he would and ought prudently to anticipate the future as well as regard the past; and yet should he give more than the value as indicated by the present income [fol. 793-5] such enhanced value would be rather speculative than real, depending on a great variety of circumstances and casualties." (55 Tenn. 800).

The evidence presented to the Commission is clear as to the value of the property of the corporation when measured by present earnings. The Commission has, however, included an additional sum in the tentative assessment on the basis of the possibility of increased earnings in the future. Certainly the addition of fifty percent of the present earning value, as in the tentative assessment, would credit the property with a value purely speculative rather than real.

This Commission does not impose the ad valorem tax on property of public service companies but it is necessarily vested with great powers of discretion in the valuation of such property for taxation. Is it asking too much that the Commission should view the property through the eyes of a "prudent investor," seeking income from operation

rather than speculative profits from re-sale in a fluctuating market?

The consideration of future profits as a guide to the present value of a property is what is meant by "franchise value," that is, the right to continue operation for the purpose of earning profit. Obviously if there is presently no basis for the computation of future profits the franchise value of a property, over and above the sum arrived at by the capitalization of present profits, is nil. There can be no franchise value separate and apart from earnings value, [fol. 793-6] as demonstrated in the following quotation from Seligman, *Essays in Taxation* (10th Edition) pages 255-256:

"As we have seen above, if the basis of the corporation tax is to be put in terms of property, corporate property includes more than merely the physical property. The franchise or the immaterial elements in the property must be included. As soon, however, as an attempt is made to measure the value of the franchise, recourse must be taken, as we have learned, to earnings. It is a commonplace of modern economics that capital is nothing but capitalized income; or, to put it in terms familiar to every business man, a business or a piece of property is worth what it will earn. As the Wisconsin commission puts it:

'It is the financial rule in the markets of this country and all over the world, that the worth of property is determined by what it will produce in income. If the permanency of the income is assured from past results in operation, the risk of investment is less and the value more stable. The earnings in the opinion of financiers is the final test of the value of corporate securities, and the estimate of the earning capacity of railroads formed by such men and acted upon in buying and selling of the securities in the market generally establishes the market price.'

"Where individual pieces of property are subject to purchase and sale in the market, the property or capital value is as readily ascertainable as the earning or income value. But where, as in the case of large corporations, there is no market or no regular purchase and sale, the only possible method of ascertaining capital value (or so-called property value) is by capitalizing the earnings, present and prospective. Hence the ad valorem system cannot satisfy itself with the inventory method, or the mere appraisal of the

physical property of a corporation. It has been found necessary to add the valuation of the franchise; and as soon as this is done, the earnings method which has been abandoned is brought in again by a back door. * * *

[fol. 793-7] The so-called "stock and bond" method of testing the value of corporate property is nothing more than a method of determining earnings value, by substituting the opinion of purchasers of stock and bonds for the computation made by the assessor by whom the earnings and operations record of the taxpayer is subjected to scrutiny. This conception is inherent in the common practice of railroad tax assessing bodies of adding the "stock and bond" value to the amount reached by capitalization of present income, and treating half the sum of the two as the system value.

The "stock and bond" method of valuation is peculiarly unreliable and unavailable in the case of this property at this time.

Consideration is particularly asked of the sentence in the last paragraph quoted above from Seligman's Essays in Taxation: "But where, as in the case of large corporations, there is no market or no regular purchase and sale, the only possible method of ascertaining capital value (or so-called property value) is by capitalizing the earnings, present and prospective."

Seventy-one per cent, more than two-thirds of the capital stock of this Railway is owned by the L. & N. Railroad Company. For many years this stock has been withheld from the market. A fraction of the remaining twenty-nine per cent is currently bought and sold. For nearly a decade the market has been a speculator's market rather than an investor's market. The price at which stock sales have been recorded has fluctuated with the general market, and only in one year (1936) has the total number of shares transferred reached five per cent of the number outstanding. Only speculation and guessing can ascribe value to this railroad system based on the sale price of so small a percentage of the stock issue. A record of all sales on the stock market is shown in Exhibit 37 to the affidavit of Fitzgerald Hall.

The Railway has never defaulted in the interest payments on its bonds. The interest rate is favorable, and the issue is secured by a first lien on all corporate properties, yet the few sales recorded in the seven months of 1938 were made

at an average price of 64 $\frac{1}{4}$ per cent of the par value. In no year since 1930 has the number of bonds bought and sold reached four per cent of the total, save in 1936, a year of widely fluctuating market prices.

The Louisville and Nashville Railroad Company is one of the strong and well managed railroad systems of the nation. It is affiliated by stock ownership with the Atlantic Coast Line, another conservatively managed and well financed system. The three roads are known as a "family group." It is impossible to estimate how much the market price of the stocks and bonds of the N. C. & St. L. is influenced and enhanced by the fact that it is regarded in financial markets as an L. & N. property; but no one would deny that such influence is great.

[fol. 793-9] The Commission has intimated that consideration of the stock and bond value of the N. C. & St. L. system must be adjusted to reflect value of properties leased and not owned. Such adjustment can only be made arbitrarily, abandoning the conception that is inherent in the "stock and bond" method of valuation—the opinion of investors. L. & N. bonds, secured by mortgage on lines leased from that road, are dealt in on the faith of the general obligation of the L. & N. to pay both interest and principal; an obligation which would be in no wise diminished by default in the payment of rent by the lessee. And since there are no stocks or bonds issued against the reversionary interest of the W. & A. there is therefore no opinion of investors to weigh against capitalization of present earnings.

If the "stock and bond" method of valuation is to be applied at all, as a measure or test of the system value of the N. C. & St. L. system, only confusion and an immeasurable increase in the hazard of error and injustice will result from an effort to combine that method with arbitrary adjustments on account of leased properties.

As pointed out in our exceptions Nos. 6 and 7, the leased properties operated as parts of the N. C. & St. L. system have been so operated since 1896. Through them the properties owned are given entry into the great traffic gateways of Atlanta and Memphis. As an independent property the P. & M. division had made a failure and it was purchased by the L. & N. at foreclosure sale. There is no evidence [fol. 793-10] that either of the leased properties could be made to pay operating expenses if operated independently.

On the other hand, it is impossible to gauge the effect of the leased properties on the income producing value of the owned properties, when operated as a single system. To undertake to value the three properties separately, the Hickman-Nashville-Chattanooga line, the W. & A., and the P. & M., would produce a result, as incongruous, illogical and wholly unreliable, as if the several branch lines should be valued separately and their value or lack of value added to or subtracted from a value ascribed to the main lines.

It is earnestly submitted therefore that the structure of the properties subject to valuation herein is such that the only guide or measure, fair to the taxpayer and State alike, is the income producing value, arrived at by capitalizing the yearly average net operating income, omitting therefrom only the income from interest bearing securities and corporate stocks expressly exempted from ad valorem taxation in Tennessee. A seven year table of such income is submitted in Exhibit No. 4 to the affidavit of L. E. McKeand, showing an average annual income for the seven year period, before payment of fixed charges, of \$961,277.88; capitalization of which at six per cent gives a system valuation of \$16,021,297.

[fol. 793-11] Whatever faith may be reasonably entertained in the future economic improvement of the country, as a basis for ascribing present value to property devoted to private business enterprise, the proof submitted to the Commission herein shows nothing better than uncertainty in future values of railroad properties and of this property in particular. Improvement in the earning power of this Railway is left by the proof entirely in the realm of hope and speculation, and there is no support for value in excess of the figure arrived at by capitalization of present earnings as a basis for the taxation of the present owners.

The proof submitted by the Railway, and to be briefly referred to herein, may be classified as (1) relating to the railroad industry as a whole; (2) relating to the N. C. & St. L. Railway, its physical condition, its traffic and revenues, actual and potential; (3) relating to the proper allocation of system value to Tennessee; and (4) relating to the equalization of the assessment of this property with the assessment of other properties.

It is perhaps unnecessary at this date, and before this Commission, the members of which have dealt with the subject so often, to refer to the total absence of identity between

value fixed as a rate base and value found as a basis for taxation; a distinction important herein because of the reference in the Commission's tentative assessment to the valuation placed upon the properties of the Railway by the [fol. 793-12] Interstate Commerce Commission, expressly stated by that Commission to be a valuation "for rate making purposes." (31 I. C. C. Valuation Reports, p. 567.)

Because of its clarity and accuracy, and the authoritative position in the field of economics of its author, we quote a statement of Professor Bonbright, of Columbia University, discussing a paper on the subject read to the annual meeting of the National Tax Association in 1927, as reported at pages 282-283 of the Proceedings of the Association. Professor Bonbright said:

"Tax Valuation"

"In striking contrast with the principles underlying valuation for rate making are those underlying valuation of property for taxation. With Mr. Tunell's contention that the two types of valuation should be distinguished the present speaker is in complete agreement. The distinction is due to the fundamentally different purposes of the two types of proceedings. In the rate case the object of a public service commission is not to *find* the value of the property but rather to *fix* the value. It is not merely to discover how much the property is earning but rather to decide how much the property *should* earn. But in the tax case the situation is quite the reverse. Here the attempt is, not to *control* earnings nor to *fix* values but rather to *discover* the earnings and to *find* the values. For the amount of the tax is supposed to depend on the economic power accruing to the owners of the property in question, under the circumstances that actually prevail as to the prosperity of the company. If a railway or a public utility, for example, has a so-called valuation for rate making of \$10,000,000 but if its earning power, due to over-competition, or to restrictive rates, or to any other reason, gives it a commercial value of only \$1,000,000, then it is this \$1,000,000 which is the proper basis for a property tax, simply because it is this \$1,000,000 which represents the wealth, the economic power, of the investors in the railway. Conversely, if this same railway is unusually prosperous, due to excellent management, or to lack of severe competition, or to ineffective regulation of rates, or [fol. 793-13] to any other cause whatsoever, with the result

that its commercial value exceeds its rate base, then it is the higher figure and not the rate making value which should be the basis of the tax. Any other policy simply defies the whole principle of ad-valorem taxation.

"I conclude, therefore, that the tax base and the rate base are properly to be distinguished, in that the former should be measured by commercial value rather than cost, whereas the latter should be measured by cost rather than by commercial value."

[fol. 793-14.]

II

Future or Prospective Profits of Railroads Purely Speculative

In its tentative assessment of August 22, 1938, the Commission reports that Protestant declined to state the value of its franchise, claiming that "there was no known rule or method by which its value could be determined." Such was the response made by Protestant in former returns, but in the return for 1938-1939 reference is made only to the so-called franchise tax laws of 1935 and 1937 (Acts 1937, ch. 100) as giving no formula for determining the value of franchise.

In the statutory direction that the Commission consider, among other things, the franchise of a railroad corporation, nothing more was or could have been intended than that consideration should be given to the value of its property as used in the operation of a railroad—its "going concern" value as distinguished from the aggregate value of items of property valued separately. (See quotation from Seligman, *supra*, p. 6).

The definition of the railroad franchise by the Supreme Court of Tennessee leaves no room for debate that this is true. After referring to the roadbed, superstructure and "franchise" of a railroad as components so essentially intermingled, and so indispensable each to the others that value cannot be ascribed to one without including the others, the Supreme Court, in *Railroad v. Bate*, 12 Lea (80 Tenn. [fol. 793-15] Reports) 573, 581, said:

"The franchise is the right to use the bed and superstructure, its value depends solely upon their use and the profit derived therefrom."

The Commission will recognize, we believe, that the problem of augmenting present value by an estimate of

future profits from operation presents a wholly different problem now from that presented prior to 1930. Only the wisest of seers can assert with assurance whether business and industry are now in the closing years of a dying era, or in the opening years of a new era; but only the blind will maintain that these years of diminishing and vanishing profits of railroads are only a depression, recession or interlude, and that the course and tenor of the 1920's will be resumed.

Conceding for argument's sake that in the true depressions of the past, or during a period of lessened profits of a particular industry, it was just and practicable to fix values in accord with anticipated or prospective profits, to reach the so-called "going concern" or franchise value, can the members of the Commission, looking at this property and the national railroad industry through the eyes of the mythical "prudent investor" of the courts and taxing boards, reach a conclusion supported by evidence that increased profits are so near and so probable that the taxable value of the property is enhanced over and above that measured by present earnings?

[fol. 793-16] Unless the assessor, in the role of investor, can answer this question in such way that, investing his own capital, he could enjoy some assurance of reasonable return, it is submitted he cannot find value upon which to base an assessment. Since value involves so much of opinion and discretion the only real protection of the Railway taxpayer is the accuracy and fidelity with which the assessor adheres to sound judgment in prophecy and avoids the realm of speculation.

The pages and exhibits of the affidavits of Protestant's president, Fitzgerald Hall, and of its vice president and traffic manager, Charles Barham, present a picture of the distressed condition of the railroad industry, and of this Railway in particular, already known to the Commission, but further demonstrate that the distress is not the result of temporary or passing conditions. They are convincing that a return to profit earning and "fair return" to the investor is dependent upon conditions not now existent, including especially the adoption of a national transportation policy by the Government, Federal and State, under which each form of public transportation may compete with others on equal terms of regulation and taxation, and under which the railroads may perform that service to the public

which they are best able to perform, at fairly compensatory rates.

No present program or conditions bring that vision nearer than an ideal to be hoped for, and certainly the prospect is not so real as to constitute or create taxable [fol. 793-17] value in the industry, nor in this property which has produced a net deficit of nearly three millions of dollars from seven years operations, with every indication that the eighth year will increase the deficit beyond the three million mark.

Witness the well-founded conclusion of Commissioner Joseph B. Eastman, uttered June 17, 1938, and quoted on page 19 of Mr. Hall's affidavit:

"In the old days the railroads could count, with the growth of the country, upon a corresponding and rapid growth of traffic which depression might interrupt but could not check. They cannot count on such growth now, and they have a transportation machine built for a volume of production which far exceeds the present demand."

What evidence justifying the purchase of the right to share in prospective profits can the "prudent investor" find to off-set this testimony of Mr. Eastman, perhaps the best informed man on transportation in the country?

The statement of Chairman C. Plawn, of the Interstate Commerce Commission, quoted at pages 21-28 of Mr. Hall's affidavit, expresses confidence in the "basic soundness" of the railroad industry, and that "with fair treatment and with the revival of business" they will pay their way, but he concedes that readjustment and the "elimination of cut-throat competition" (which the present legislative policy of State and Federal governments supports and encourages) [fol. 793-18] will take time, during which the railway plant must be maintained and kept intact, and modern equipment substituted for that which is obsolete. (Mr. Hall's affidavit, p. 28.)

The issue now presented is whether the possibility that changes in governmental policy will in the future produce fair treatment for the railroads, financially beneficial to the present owners, after the lapse of an undefined period during which deficits must continue and expenditures must be made to maintain, improve and modernize the plant, is a present asset of value upon which taxes should be currently paid.

"The country," says Mr. Eastman, "has been keen for the new forms of transportation, and to obtain them has spent billions of dollars." (Hall affidavit, p. 21.) Five Billions of dollars of Federal governmental expenditures for water, highway and air transportation to compete with the rails, says Chairman Splawn, is an incomplete summation of governmental aid to those forms of transportation. (Hall affidavit, p. 23.)

The reduction of rail traffic and revenues with corresponding increases in the traffic of competing agencies is graphically presented in the series of tables and charts verified by the affidavit of Dr. J. H. Parmelee, Economist of the Association of American Railroads, to each of which the consideration of the Commission is respectfully urged.

[fol. 793-19] The development of water, highway and air transportation is presented in some detail by the affidavit of Mr. Hall. More than four million trucks and twenty-five million passenger cars registered in 1937 tell their own story. (p. 5.) The 1,674 public carriers operating over Tennessee highways, collecting $8\frac{1}{2}$ millions of dollars of revenue, are only a part of the picture. "The privately owned and operated truck represented an outlay over five times that of the regulated truck." (Chairman Splawn in Hall affidavit, p. 23.)

Commercial air transportation is no longer an experiment. Exhibit No. 7 to Mr. Hall's affidavit is an official map of the civil airways of the U. S., indicating to some extent the enormous expenditures of the Government in aid of such transportation. Exhibit No. 8 is a summary of air travel to and from Nashville, duplicated at this Railway's other principal terminals, Chattanooga, Atlanta and Memphis. National statistics of air travel and movement are set out on pages 8 and 9 of the affidavit.

Transportation by water is increasingly competitive with this Railway, and only a prophet can measure the effect of the projects of the Tennessee Valley Authority on its future traffic. If it should be conceded that this Governmental undertaking will increase the industrial activity and the population of the area, it must likewise be conceded that this will not be materially felt by the present generation. Its immediate effect is to divert existing traffic from rails to water, to render unproductive areas included in reservoir pools as at Guntersville, Alabama, and Johnsonville, Tennessee, on this Railway's lines, and to

substitute electric power moving by wire for coal moving by rail. See especially statistics supporting this statement in exhibits to Mr. Hall's affidavit, Nos. 12, 13, 14, 15, 16 and 17.

Water transportation and its effect on the traffic and revenues of this Railway is the subject of pages 10-13 of Mr. Hall's affidavit, including the Tennessee Valley Authority's own statement of its program and prophecy of its effect:

"Traffic on the Tennessee, which had fallen to about 800,000 tons in 1932, has been steadily increasing, and in 1936 was at the pre-depression level of 2,166,000 tons. The figures for 1938 are expected to be the highest in the history of the river.

Preparations for the Future

"Various indications are appearing to show that traffic will increase rapidly as soon as more dams are completed. Private companies are buying waterfront sites for industrial plants and water terminals. Inquiries are coming in regarding the prospects for navigation. The signs point to heavy barge traffic in petroleum and petroleum products, grain and grain products, forest products, steel, coal, and coke."

That traffic on the Tennessee and Cumberland Rivers cannot be materially increased without a corresponding reduction of traffic on the N., C. & St. L. Railway, is clearly indicated by the map "Principal Waterways of the U. S.," Exhibit No. 11 to Mr. Hall's affidavit.

[fol. 793-21] Exhibit No. 18 is a governmental report on the market movements of dairy and poultry products. Table 4, page 6, of this exhibit shows significantly a decrease from 1936 to 1937 in the movement of butter by rail to the four greatest markets, New York, Chicago, Philadelphia and Boston, and a corresponding increase in truck movements. Other tables in this exhibit show the same adverse trend.

Exhibit No. 19 to Mr. Hall's affidavit presents a Bureau of Agricultural Economics record of truck movement of fresh fruits and vegetables to the larger markets. Page one indicates, by comparing 1935 and 1936 records, how rapidly truck movement is being substituted for the rails in handling this most important element of the traffic of

the N., C. & St. L. (See affidavit Charles Barham, p. 43.)

Exhibit No. 20 to Mr. Hall's affidavit is a statistical study of the effect of the competition of other forms of transportation on rail traffic, prepared and issued by the Bureau of Statistics of the Interstate Commerce Commission, and is commended as worth the study required to interpret its significance. Its purpose, as stated on page 3 of the exhibit, "is to compare the traffic actually carried by railways in each of the years from 1926 to 1936 with the total traffic which would have been carried by railway if the traffic of each class of commodity had increased or decreased in proportion to the production after 1923-1925." The report [fol. 793-22] shows that rail tonnage for 1936 had failed by the enormous total of 196 million tons of freight to sustain its relative position with respect to national production of transportable commodities, as compared with the base years 1923-1925; with a loss of revenue ranging from 615 million dollars to more than a billion, the amount being dependent upon the length of the lost hauls; in percentage terms, from 15 to 25 per cent of the gross revenues of Class I Railroads for 1936.

Charts contained in Dr. Parmelee's exhibit also demonstrate the former parallel between the rise and fall of the index of industrial production and the carload traffic of the railways, with car loadings failing to keep pace with production in the partial recovery months of 1936-1937.

The evidence leaves no room for doubt that the railroads are the double victims of a revolution in the economies of industry and of a revolution within the industry of transport. St. L. in particular, to the realm of profit yielding investment. More than general business recovery will be required to restore railroad properties, and the N., C. & St. L. in particular, to the realm of profit yielding investment.

[fol. 793-23]

III

The Especial Position of The N., C. & St. L. Railway

Exhibits 23 and 24 to the affidavit of Mr. Hall show that for the nation's Class I railroads the revenue ton miles for 1937 were only 80 per cent of 1929, and that the N., C. & St. L. Railway had sustained an even greater reduction in revenue tonnage; its 1937 revenue ton miles being only 69 per cent of the tonnage of 1929, and its gross freight revenues only 64 per cent of the 1929 freight revenues.

This Railway therefore has a longer path to travel, to recover its 1929 position than the average railroad system, and the proof herein shows the path to be more difficult.

The practical destruction by barge lines of the formerly profitable rail transportation of gasoline by the N., C. & St. L. is detailed in Exhibit 16 to Mr. Hall's affidavit.

The destructive effect on the branch line traffic and revenues of the transportation revolution is clearly indicated by the fact that in 1928 the N., C. & St. L. operated 70 agency stations at branch line points, of which 43 have been closed because an absence of revenue producing business had converted them from assets to liabilities. (Affidavit Charles Barham, p. 13.)

[fol. 793-24] Loss of branch lines as feeders to main line traffic has direct relation to the loss of the formerly profitable rail movement of live stock from rural stations to market. Dr. Parmelee's chart shows that this movement throughout the nation, formerly handled entirely by rail, has shifted more than half to trucks. The experience of the N., C. & St. L. is worse. In 1921 the Nashville market received 690,991 head of live stock, of which 70% arrived by rail. In 1937, the rail share of the movement was 3.6%; the trucks' 96.4%. (Affidavit Charles Barham, pp. 13-14.)

The Tennessee highway map, exhibit to the affidavit of Mr. Barham, is colored to indicate the high percentage of branch mileage of our system in Tennessee, and also demonstrates how universally the distance from rural section to city markets is shorter and more direct by paved highway than by rail. Note the following illustrative examples:

Between Nashville and	Rail distance	Highway distance
Sparta	130	91
McMinnville	103	73
Manchester	81	64
Tracy City	107	93
Centreville	70	53

Between Chattanooga and like points the disparity is greater.

The plight of the once valuable branch lines of this Railway in Tennessee (74.5% of the total branch line mileage) is portrayed in some detail in Mr. Barham's affidavit at

pages 7-12, to which the Commission is respectfully referred.

[fol. 793-25] The magnitude and extent of common carrier operations of motor vehicles in Tennessee is shown fully in the proof filed by the Railway, notwithstanding the Commission's familiarity therewith and that such development is a fact of current economic history within the common knowledge of citizens, courts and administrative agencies of government.

Even coal is now moving in substantial volume by highway and truck. (Affidavit Charles Barham, pp. 16-17.) Less-than-carload freight of this Railway, in 1920—386,953 tons or 5.33% of the total revenue tonnage; has practically vanished, the 1937 volume being only 33,349 tons, two-thirds of one per cent of the total tonnage. (Barham, p. 28.) And the extent to which passenger traffic is now taken over by buses is illustrated by a one day count at Nashville, 849 passengers buying tickets for travel by bus, and only 290 for travel over both this Railway and the L. & N. (Exhibit 5 to Mr. Hall's affidavit, p. 14.)

The two hundred and fifty thousand trucks registered in 1937, in the four states in which this Railway operates, represent a substantial increase over the previous year. (Hall, Exhibit 6.) Large and expensive terminals serve the truck carriers in each of the cities on the line, and those common carriers maintaining headquarters in the four states took in more than \$24,000,000 of revenue in 1935. The 1937 volume is not available but is undoubtedly much greater. It [fol. 793-26] would be impossible to estimate the revenues of interstate carriers operating in the four states, with headquarters elsewhere. (Mr. Hall's affidavit, p. 7, and Exhibit 5.)

Of even more fundamental and permanent importance, in valuing the properties of the N., C. & St. L. Railway, is its competitive situation with respect to other rail lines, particularly treated at pages 40-45 of Mr. Barham's affidavit.

Every important city and market on the lines of this Railway is served by other and larger railroad systems, providing intensive competition for traffic to an extent which Mr. Barham states is not repeated with any other road in the south, if in the country. (p. 41.) No important connecting

carrier has reason to favor this line in through rate divisions or exchange of traffic.

Twenty per cent of its tonnage is neither originated nor terminated on the tracks of this Railway, and even a casual study of the income and operating statements discloses that the road could not operate long without that tonnage, justifying the statement, made in our exceptions to the proposed assessment, that the territory served by the Railway does not produce enough traffic to support a first class railroad and that it has one only because the N., C. & St. L. management, by superior service and solicitation, brings to the road tonnage which would otherwise move over other routes.

[fol. 793-27] A condensed statement of the depletion of natural resources along the lines of the N., C. & St. L. formerly productive of traffic and revenue is presented in Exhibit 48 to the affidavit of Mr. Hall.

In 1918, 1919 and for the first two months of 1920, the road was operated by the United States Railroad Administration and competitive routing and solicitation of traffic were either eliminated or neglected. In that three year period the net railway operating income fell from \$3,952,294 to a deficit of \$560,044, the deficit disappearing the first full year after owner operation was resumed. This is an earnest of what may be expected for the road and its taxpaying value if by excessive imposts its ability to secure and serve its competitive traffic is destroyed.

The nature of the competitive traffic handled by the N., C. & St. L. is set out on page 43 of Mr. Barham's affidavit, with emphasis on the necessity that it move speedily and without delay, according to fixed freight train schedules.

Mr. Barham (pp. 43-44) says:

"This traffic, much is perishable, demands, if had at all, that competitive schedules and competitive service be performed despite the physical handicaps described, or the cost they involve. The result may be illustrated like this:

"Between Memphis, Martin, Paducah, Nashville, Chattanooga and Atlanta, in addition to all other services, the N. C. & St. L. operates six through trains daily (four on the Memphis Division) with average speeds up to 30 miles per hour, a thing possible only by an extraordinary reduction [fol. 793-28] in the train tonnage, which could be handled except for the required speed. On these schedules the train

maximums are from 1550 to 2200 gross tons, although the engines, if used on maximum grades of one-half per cent, could easily handle more than double and at the same speed, or fifty per cent more over the present grades if speeds could be reduced. On the Burlington from Duluth, Minn. to Paducah, Ky., with its maximum of three tenths of one per cent (15.3 feet per mile), the same engine could pull 6,000 tons.

"These conditions of competition further require schedule maintenance substantially as certain as with passenger trains. The trains must move, as scheduled, whatever tonnage offers at the time. They cannot be held if this is less than the prescribed maximum, nor is this always available. So it is that the actual tons handled in a representative period are found to be 14.83 per cent less than potential tons. On purely local trains, due to the enormous decrease in local traffic, the potential is easily fifty per cent more than actual, yet these local trains must run if the public is adequately served."

Bearing especially upon the value of the system properties are the physical characteristics of the roadway which must be overcome at exceptional operating expense, to successfully handle the traffic described by Mr. Barham. We quote from his affidavit, pages 38-40:

"The difficult character of the territory traversed by the N. C. & St. L., particularly in Tennessee, is well known. It has been recognized by the Interstate Commerce Commission in many cases, among them—

34	I. C. C.	696
35	"	88
37	"	602
58	"	697
61	"	331

"Profitable and, therefore, successful modern railway practice calls for few exceptions to a maximum grade of one-half of one per cent against traffic; there are important roads having less. On the N. C. & St. L. one-half of one [fol. 793-29] per cent can almost be counted level track. For example, on the Chattanooga Division, Nashville to Chattanooga (152 miles), the heart of the line, the maximum *uncompensated* grade is 2.62 per cent, which is the tangent equivalent of 2.86 per cent. In the first 25 miles from Nash-

ville; southbound, there are 9 grades exceeding one per cent, one exceeding $1\frac{1}{4}$, one $1\frac{1}{2}$. Between Murfreesboro and Tullahoma 15 grades exceeding 1 per cent, 8 exceed $1\frac{1}{4}$, one $1\frac{1}{2}$. The grade at Fosterville (1.2 to 1.48 per cent) is five miles long; the one at Normandy (.98 to 1.38) is also five miles. Between Cowan and Sherwood the line crosses Cumberland Mountain on grades running as high as 2.4 and 2.6 per cent for nearly five miles. South of Sherwood it crosses Raccoon Mountain on grades running from 1 to $1\frac{1}{4}$ per cent for seven miles.

“On the Nashville Division, Nashville to Hickman, the grades are from .85 to 2.08 per cent. One grade, six miles long, runs from $1\frac{1}{2}$ to 1.62 per cent. There is a continuous southbound grade of 20 miles running from .64 to 1.94 per cent.

“On the Paducah-Memphis line the maximum is 1.27.

“The Orme Branch has a maximum grade of 2.4 per cent.

“ “ Sequatchie Valley Branch 1.31 “

“ “ Decherd Branch to Columbia, 2.42 “

“ “ Huntsville Branch, 2.30 “

“ “ Shelbyville Branch, 1.41 “

“ “ Centreville Branch, 3.42 “

“The Centreville Branch is 60.78 miles in length; it has only $3\frac{1}{2}$ miles of level track, with 183 grades, none less than 500 feet counted.

“In giving these grades the figures shown are without compensation for curvature, the latter equalling $\frac{4}{100}$ per cent for each degree. To illustrate,—the maximum of 3.42 per cent on the Centreville Branch is, because of curvature, equal to 3.92 on tangent track.

“Perhaps a graphic idea of the system’s difficulties may be condensed in the statement that it operates over more than 600 grades exceeding 1 per cent, and more than 100 exceeding 2 per cent, all west of Chattanooga, with no grade counted less than 500 feet long, while on the Atlanta Division, although no grade exceeds one per cent, there are 300 curves in 138 miles; with a total of more than ten thousand degrees,—that is, more than *thirty complete circles*.”

[fol. 793-30] Mr. Barham further shows that much of the traffic of the N., C. & St. L. is seasonal, in one direction with no corresponding back-haul, necessitating one-way movement of empty equipment and the return of train crews to home cities, to whom unearned wages must be paid. Note

the empty car movement listed in Exhibit No. 45 to the affidavit of Mr. Hall and the unbalanced directional movements described on page 45 of Mr. Barham's affidavit, of which he (page 46) says:

"These differences are highly important. The facilities owned and used must be maintained for maximum traffic. If the lack of balance is directional, costs mount because the power and crews must return at once to the home terminal, and this is eventually true of the equipment (cars). The return of crews and power must be immediate, whether the business available is much, little or none at all. The lack of tonnage balance with the NC&STL, both directional and seasonal, has direct bearing *upon its value for purposes of taxation*, for as operating costs increase in proportion to total tonnage handled, net earnings decrease.

"The peculiarities of the traffic involve other substantial added costs, e.g.—because of the number of refrigerator and ventilated cars used, none being owned by the NC&STL (together with mileage on tank and other special cars), the car hire payments of the NC&STL are excessive. This is shown by the fact that while NC&STL ownership of standard box cars is well abreast and generally in proportion to mileage exceeds that of other southern lines, in 1937 it paid out for foreign car hire \$254,919.70 over and above the amount collected for the use of its own cars."

[fol. 793-31] The proof of the pudding is found in the result. Traffic of the nature described by Mr. Barham costs more to handle (and the resulting profit is smaller) than the traffic of the average railroad. This is confirmed by comparing traffic results of the NC&STL with the average for the Class I roads of the Nation. Witness the comparative statement for 1937, quoted from page 8 of the affidavit of L. E. McKeand:

	NC&STL Railway	National Average
"Freight car miles per train mile (excluding caboose)	31.9	46.6
Net ton miles per train mile	444	796
Freight train miles per train hour	18.2	16.1
Gross ton miles per train hour (excluding locomotive and tender)	22 001	30 349
Freight expense per 1000 revenue ton miles	\$9.61	\$6.41"

• Because of schedule requirements and grades and curves on the main lines the freight trains of the N., C. & St. L. carry only two-thirds as many cars as the national average; carry much less than two-thirds the net tons; carry only 72% of the gross ton miles per train hour; and incur a freight expense per 1000 revenue ton miles of \$9.61, which is 50 percent greater than the national average. Only in speed of freight movement does the N., C. & St. L. exceed the national average, an excellence which the proof shows is both necessary and costly.

[fol. 793-32] Reference to the 1938 edition of Poor's Manual of Railroads shows that the experts in charge of that authoritative compilation advise the investor that the item in the foregoing table "gross ton miles per train hour" is the most important single guide to comparative railroad value, reflecting as it does so many operating or traffic units, including the condition (including grades) of both roadway and equipment. (Survey of R. R. Industry, p. 96).

Adding its materially adverse effect on earnings to the distinctly unfavorable freight expense ratio, is the fact that the Railway tax accruals in 1937 had reached 6.13% of total operating revenues, as compared with 2.54% in 1916. (Affidavit L. E. McKeand, p. 5).

Contributing substantially to the excessive freight expense of this Railway is a striking excess in the ratio of payroll costs to gross operating revenues, in 1936 nearly 15% greater than the average for all Class I railways: 60.18% for the N., C. & St. L., and 45.61% for the national average. In 1937 this ratio of payrolls to gross operating revenues had increased for this Railway to 62.98%, the figure for the national average being yet unavailable. (See affidavit L. E. McKeand, pp. 6-7, and Exhibit 2). This excess of payroll costs is explained by Mr. McKeand by reference to "unbalanced traffic, restricted loading of freight trains, due to heavy grades and fast schedules, excessive maintenance-costs" etc. (p. 6).

[fol. 793-33]

IV

The Physical Plant and Equipment of The N., C. & St. L. System

Of foremost importance in the valuation of the N., C. & St. L. system properties is the fact that of its 231 agency stations, producing traffic and revenue in 1920, only 86 re-

main today. Only dire demands of economy forced the closing of the 145 once profitable agencies. (See affidavit of Fitzgerald Hall, pp. 29-30, and Exhibits 30-31.)

The forced abandonment of track mileage began with 1929, since which date 127.72 miles of main track branch line mileage have been abandoned, all save 16.35 miles in Tennessee. This abandoned mileage, with its localized property, was valued for tax purposes at \$758,146; yielded as salvage only \$249,419; and represented an investment cost of \$1,780,893. (Exhibit 6 to affidavit of L. E. McKeand.)

(Note: The branch mileage in Tennessee abandoned since the assessment of 1936 was assessed by this Commission at \$158,302. Failure of the Commission to reduce the present assessment of distributable property in Tennessee by approximately that amount is assumed to result from the Commission's conception that the value of the remainder was enhanced by the abandonment. This, we respectfully submit bears a suggestion of unfairness, since it is wholly [fol. 793-34] inconsistent with the Commission's finding in 1936 attributing value to the mileage subsequently abandoned, and impeaches the Commission's finding of present value in the remaining branch mileage.)

Equipment

The condition, age and value of the equipment of the N. C. & St. L. Railway are treated in detail in the affidavit and exhibits filed by Mr. Hall at pages 29 and 39, Exhibits 28 and 47. All equipment was returned for taxation at cost less accrued depreciation, computed under the very strict scrutiny and supervision of the Interstate Commerce Commerce Commission, with no allowance or deduction for deferred maintenance or unserviceable condition, for which adjustment in valuation should here be made. Only an impracticable optimist could find "actual cash value" in this equipment equal to the cost less depreciation stated in the return.

The magnitude of the expense item "maintenance of equipment" indicates clearly how responsive the actual present value of railroad rolling stock must be to the present condition of maintenance. For 1937 it cost the Railway \$3,481,509 to maintain equipment valued at less than eight

million dollars, and the sum so expended was \$100,000 in excess of the equipment maintenance cost of 1936, the only year in seven showing even the small corporate income of \$51,999. For the six months of 1938 the cost of equipment maintenance was \$1,151,726, a reduction of \$589,028 under [fol. 793-35] half the sum so expended in 1937, effected by closing shops over an extended period and by other economies and postponements. Obviously the greater part of this reduction in maintenance costs must be made up in the near future. Mr. Hall's Exhibit No. 46 shows an accumulated deficit of actual equipment maintenance expenditures as compared with those recommended by the Superintendent of machinery and equipment, the estimated deficit for 1938 being \$1,339,276; the greater part of which is simply deferred, amounting to 17.5% of the book value of the equipment.

The detailed description of equipment in Exhibit 47 to Mr. Hall's affidavit is itself a summary, and may not be adequately summarized here. Seventeen locomotives, more than a thousand freight cars, and 26 passenger cars in an unserviceable condition, on which large sums, difficult to estimate, must be expended to give them the value represented by cost less depreciation; with hundreds of cars of such ancient vintage and so nearly obsolete as to make their future repair and restoration to service most unlikely. The following tables, extracted from Exhibit 47, do not show the entire picture but are illustrative.

Locomotives:

5—8 years old.

26 from 13 to 19 years old.

77 from 20-30 years old.

87 more than 30 years old.

194 total.

(85% of the total locomotives are not used on branch line mileage, and the average mileage of all locomotives in the five years period, 1933-1937, was 18% less than for the years 1926-1930.)

[fol. 793-36] Freight Train Cars:

Age

- 1216 more than 30 years old.
- 1723 from 25 to 30 years old.
- 932 from 20 to 25 years old.
- 1928 from 10 to 20 years old.
- 545 recently acquired or rebuilt.

6344 Total.

Condition

- 366 below standards of A.A.R. and barred from interchange after 1938.
- 1336 shorter than standard; expensive to maintain, real value only as scrap.
- 1026 stored in bad order, included in two items above.

Passenger Train Cars:

- 59 All wood, usable only on branch lines and between Paducah and Hickman, of 31 years average age; 25 of which are unserviceable and of no value except as scrap.
- 15 Steel underframe, average age 20 years.
- 79 All steel cars, age 15-23 years, with one in unserviceable condition.

153 Total.

Exhibit 49 to Mr. Hall's affidavit details expenditures (other than maintenance) aggregating \$1,409,036 which must be made on the equipment now in service during the next few years, to meet the requirements of the Interstate Commerce Commission or the Association of American Railroads, as a condition to their future serviceability. The estimated service life, valued by cost less depreciation, takes no account of this required expenditure, amounting to 18.8% of the total present book value treated by the Commission as its present taxable value.

[fol. 793-37] In addition to the age and condition of equipment, consideration should be given to the fact that, for lack of traffic, as well as unserviceability, 38% of freight cars, 17% of passenger cars, and 9% of locomotives, re-

turned for taxation, were idle on the return date and have remained idle. (Affidavit of Mr. Hall, p. 34, and Exhibit 44.) Taxable value of railroad equipment is created only by use.

Since 1934 the Railway has scrapped or sold 2,239 cars and 25 locomotives; realizing a salvage value of \$285,533, for equipment costing \$2,139,850. (Affidavit Hall, p. 39.)

Buildings, Structures and Roadway

Exhibit No. 29 to Mr. Hall's affidavit shows the average age of principal shop buildings at Nashville to be 39 years, and at the system's principal points 29 years; of freight depots in the larger cities 35 years, and of the more important intermediate points 46½ years.

Mr. Hall's portrayal of the age and lack of modernity of shop and other structures is supported by the affidavit of C. M. Darden, Superintendent of Machinery; photographic exhibits revealing converted cars and antiquated sheds, which in any industry other than a railroad would hardly be dignified by reference or valuation.

[fol. 793-38] Mr. Hall's Exhibits 32, 33 and 34 fully support the text of his affidavit, pages 29-31, showing the absence of real value in so many of the structures assessed at substantial figures by the Commission. It seems obvious that the "prudent investor," as well as the Commission, will look askance at the magnitude of expenditures which must be made to modernize the plant before anticipated prospective profits of future years can be converted into income or dividends to investors.

The roadway has perforce been maintained to meet the needs and requirements of safety, yet even here economy has forced postponements of expenditures, as clearly indicated by the table at the top of page 36 of Mr. Hall's affidavit, comparing track and equipment maintenance in 1937 and 1938.

Expenditures for maintenance of ways and structures in 1937 were \$126,649 less than conservative budget demands, and the deficiency in expenditures for this purpose for 1938 is estimated at \$711,337. (Hall, Exhibit 46.)

Many bridges must soon be rebuilt; Exhibit No. 50 disclosing a list of 11 bridges on falsework, the youngest being 45 years old; and 8 others over which trains must be operated at reduced speeds, all of them at least 45 years old.

[fol. 793-39] Exhibit 40 to Mr. Hall's affidavit is a table of the more important items of materials and supplies purchased by the Railway, with price schedules for the years 1933-1938 inclusive. No item fails to show a substantial increase in cost, the percentage increases since 1933 being for cross-ties 53%, for pig iron 96%, bar steel 53%, car decking 93%, coal 21%, etc.

Excessive Governmental Imposts Destructive of Taxable Value

The reference implied in the above title is not here made in a spirit of complaint. The Commission is not responsible for the rule of law that railroad properties must be assessed according to actual cash value; but it is not only the province but the duty of the Commission, as we respectfully urge, to consider the effect of governmental imposts on the profit yielding ability, and therefore the taxable value, of a railroad property.

What "prudent investor," about to invest in this property, would fail to consider that railway tax accruals had increased, from 1916 to 1937, from 2.54% of operating revenues, to 6.13%; that over a period of 22 years the tax bill has been two-thirds of all dividends paid; that for ten years tax payments have exceeded corporate income by \$2,218,000; and that for seven years a tax bill of \$4,000,000 had produced a net corporate deficit of \$2,708,000? (Affidavit McKeand, p. 5; affidavit Hall, p. 33 and Exhibit 41.) [fol. 793-40] In addition to taxes imposed for the support of government, exactions have been made on the Railway from time to time for expenditures in the public interest which produce no revenue, such as crossing protection and bridges over canals. Exhibit 39 to Mr. Hall's affidavit shows such expenditures since 1920 in the sum of \$1,007,758, an average of nearly \$60,000 a year.

V

The True Taxable Value of The N., C. & St. L. System

The pages of this brief and the proof filed with the Commission have been laboriously assembled in the belief, and for the purpose of demonstrating, that the taxable value of \$23,996,604.14, tentatively placed on the system property by this Commission, is far in excess of the actual value, even

before equalization with the assessments on the property of other taxpayers.

The earnings table, included in the Commission's assessment report, correctly sets forth the net railway operating income for the five years period, 1933-1938, and the net corporate deficit for those years. But the column headed "other income" is a gross revenue figure, from which the income statements for the years covered show deductions should be taken, including particularly taxes on non-operating property, the gross rental from which is a part of the income figure used.

[fol. 793-41] In the income column just referred to is also included income from funded securities, including governmental obligations. The Commission also refers in the assessment to securities and choses in actions, with situs in Tennessee, in the sum of \$2,585,286, and with situs elsewhere in the sum of \$1,149,471.

None of these securities and choses in action are taxable in Tennessee, (except bank deposits) under the provisions of the Hall Income Tax Law. (Williams' Code, sec. 1123.1-1123.34.) And since the only cause for referring to income in the assessment report is to indicate a value for the property producing such income, it is improper to include income from non-taxable securities in the earnings table of the assessment.

Certainly the capitalization of income from tax-exempt securities will produce no fair measure of the value of taxable property.

Consideration is especially requested of the income statement, Exhibit No. 4 to the affidavit of L. E. McKeand, Comptroller of this Railway.

The tables in this exhibit, as in other exhibits, were prepared so as to present the earnings record for seven years, instead of five, for the reason that in its assessments for 1934 and 1936 this Commission used a seven years period as the proper test of present earning capacity.

[fol. 793-42] In Mr. McKeand's exhibit the net railway operating income has been augmented by adding thereto every other item of corporate income, except that from interest bearing securities and dividends, exempt as above shown from ad valorem taxation in Tennessee; deducting only the tax payments for ad valorem taxation of the property producing the "miscellaneous rent income." This deduction is proper because net railway operating income

is income after tax payments, and no one would contend that capitalization of taxes paid would properly measure the value of taxable property.

The result is a statement of all income of the corporation, except that derived from tax exempt securities. Taxes and operating expenses have been deducted, but no deductions have been made for fixed charges, interest on funded debt, rental on leased lines, nor for depreciation on buildings or structures:

The seven years average income so arrived at is \$961,277.88. Capitalized at six per cent, (the rate justifiable in *Great Northern Ry. Co.* 1. Weeks, 297 U. S. 135, February, 1936) a system value of \$16,021,297 is reached.

System value in that amount is, however, reached only by reason of the fortuitous circumstance that, because of the ownership of the Western & Atlantic lines by a sovereign state, taxes on that property are paid in the form of rent and therefore are included in the net railway operating income capitalized. It has not come to our notice that any [fol. 793-43] other railroad has its net railway operating income so greatly augmented by sums payable as rent for leased lines, properly deductible as taxes. Our Exception No. 6 demonstrates that if the W. and A. in Georgia had been taxed during the seven years test period as other divisions of the system were taxed, approximately \$150,000 of the \$600,000 annual rental would have been paid as taxes instead of as rent. Deducting this \$150,000 from net railway operating income would reduce the average annual income to be capitalized to \$811,277.88. This income capitalized at 6% would indicate a system value of \$13,521,298.

When included in system value determined as a basis for allocation to Tennessee for taxation, it is neither just nor proper to assign a higher value to the W. and A. division because owned by a state with power to include taxes in rental rather than by a citizen whose property is subject to taxation.

In the light of the proof filed with the Commission, it is respectfully submitted that the only available or trustworthy guide to the taxable value of the N., C. & St. L. system is its present net operating income, capitalized at a reasonable rate; that the economic condition of the nation and of the railroad industry, as well as the physical condition and plight of this Railway, forbid and render unjust the addition to the value so determined of any sum deemed to be

the measure of a capacity to earn future or prospective profits. No evidence is available of any such added value.

[fol. 793-44]

VI

The Allocation of System Value to Tennessee

Allocation of the ascertained value of the system distributable property to Tennessee, for assessment, by a method which arbitrarily imports values into the state from outside its boundaries, produces a result so clearly unjust to the taxpayer as to constitute inequality and a denial of due process of law, and is therefore void.

Union Tank Line Company v. Wright, 249 U. S. 275;

Wallace v. Hines, 253 U. S. 66;

Rowley v. Chicago & N. W. Ry., 293 U. S. 102;

Great Northern Railway Co. v. Weeks, 297 U. S. 135.

Since the proof shows very clearly that the average value per mile of main tracks outside Tennessee is greater than within the State, the allocation of system value to Tennessee according to track mileage brings into the State for taxation values located and situated elsewhere, in violation of the Railway's constitutional rights as declared in the cases above cited.

It is a mistaken view that the statute, Code section 1528, restricts the Commission to this method and plan of allocation. And if the statute is ambiguous, it is the duty of administrative officers, as well as the courts, to give it that reasonable construction which acquits it of arbitrariness and unconstitutionality.

[fol. 793-45] The method of allocation is controlled, if at all, by section 1528 of the Code. That section directs that " * * * after ascertaining the value of such distributable property wherever situated within the state, and after having deducted from its value one thousand, the commission shall divide the remainder by the number of miles of the entire length of the road in the case of railroad companies * * * and the result thereof shall be the value per mile of such distributable property of said companies, respectively, for the purpose of assessment and taxation" etc.

If there be some ambiguity in this statutory language, as to whether this provision contains a method for the allocation to Tennessee of system mileage value, or simply a

method for the distribution within Tennessee of the total value of Tennessee mileage, its proper construction should be put at rest by the direction that the \$1,000 deduction is to be made from the aggregate value of the distributable property valued, before any further steps are taken. This deduction is obviously to take care of the constitutional exemption of \$1,000 of property, and if it is to be deducted from a sum, part of which represents the value of properties outside the state, the property in Tennessee would receive only a part of the constitutional deduction and not all of it as the constitution requires.

It follows, therefore, that the section is susceptible to the reasonable construction that it is a direction only for distribution of value within Tennessee and does not govern [fol. 793-46] the method of allocating system property to the state.

If this view of section 1528 is correct, the result is that the State Commission is left free to adopt any reasonable and fair method of valuation and allocation, and is not bound to make the allocation on the basis of the ratio of Tennessee miles to system miles.

In *Great Northern Ry. v. Weeks*, 297 U. S. 135, the Supreme Court ruled that allocations of system value are sufficiently accurate for practical purposes if arrived at by the exercise of sound judgment and "based on facts that fairly reflect the relation between value of the system as a whole and value of the part within a state."

In its report of tentative assessment the Commission values the system distributable property at \$18,022,133.14. By reference to Tennessee's proportion of main track mileage along it allocates to Tennessee \$12,926,944 of this value, and thus assesses distributable property in Tennessee at a sum which is 71.73 per cent of the ascertained system value, that being the ratio of main track mileage in Tennessee to system mileage.

Exhibit No. 3 to the affidavit of L. E. McKeand is a table of service miles and traffic units for the year 1937, showing clearly the relative traffic use made of the system tracks in the aggregate for the system, for the mileage in Tennessee, for the mileage outside Tennessee, and for the several [fol. 793-47] branches; with per track mile averages for each of the several divisions indicated above.

The relatively inferior value of branch line mileage is of course recognized by this Commission in its apportionment

of state value to railroad divisions. The greatly inferior "use-value" of branch lines is demonstrated by the tables embodied in Mr. McKeand's Exhibit 3, from which he testifies, at page 9 of his affidavit:

"It is evident from the figures submitted that the preponderance of our business is handled on the Main Line, that is, the track extending from Paducah, Memphis, Hickman to Atlanta. As compared with branches, reduced to a percentage basis, the results are as follows:

	First Main Track Miles	Loco- motive Miles	Car Miles	Gross Ton Miles	Train Miles	Pass- enger Miles
Main Line	62 0	91 8	95 3	95 6	92 2	98 8
Branches	38 0	8 2	4 7	4 4	7 8	1 2

Average per Track Mile
Actual

Main Line	689 94	7379	127,815	5,267,958	5495	95,376
Branches	421 92	1076	10,296	389,838	752	1,787

Note: The so-called West Nashville Branch (3.65 miles) is a part of the Nashville Terminal yards and produces no road-haul revenue. It is used only for switching movements and no traffic records are kept for it. It is, therefore, omitted from the tables in Exhibit No. 3. Mileage between Hickman and Martin and between Paducah and Bruceton, properly classified as branch lines in the affidavit of Charles Barham is here included as main line tracks.

[fol. 793-48] "While the Branch mileage is 28% of the total, it handled only 4.4% of gross ton miles and 1.2% of passenger miles. The density of tonnage per mile of branch line track, as shown by the foregoing, is only 7.4% of the main line track tonnage. For instance, a mile of Main Line handled 5,267,958 gross ton miles as compared with 389,838 gross ton miles on branches.

"As for passenger miles, the Main Line handled 95,376 per track mile as compared with 1,787 on branches."

The branch line mileage of the system comprises 425.41 main track miles, of which 318.08, or 75% of the total mileage, lie in Tennessee. This includes the so-called West Nashville branch of 3.65 miles.

As pointed out in exceptions (page 17) filed by the Railway to the tentative assessment, the fact that each operating division of the system lies partly in Tennessee, with the single exception of the Rome branch, renders available a significant test of the allocation based on mileage alone. The test assumes only that the several miles of a single operating

division are of equal value, which is of course the basis of the Commission's distribution of value within the state.

Extending to the entire mileage of each operating division the value assigned by the assessment to that part lying in Tennessee, and accepting the valuation of the Rome branch, made by the Georgia assessor, the aggregate valuation of the out-of-Tennessee mileage is \$6,954,793, made up as follows:

[fol. 793-49]		Alabama	Per Mile Assessment	Total Value
Division	Mileage			
Chattanooga	24 11		\$37,200	\$896,892
Squatchie Valley	2 90		5,500	15,950
Orme	8 39		3,300	27,687
Huntsville	77 90		3,300	257,070
		Kentucky		
Paducah & Memphis	49 24		14,300	704,132
Northwestern	10 52		21,800	229,336
		Georgia		
Chattanooga	2 73		37,200	101,556
Rome	18 14		11,361	206,090
Western & Atlantic	121 40		37,200	4,516,080
		315.33		\$6,954,793

The aggregate out-of-state value so reached, added to the valuation made by the Commission of the mileage in Tennessee, gives a system total of \$19,881,737 which exceeds the system distributable property value found by the Commission by \$1,859,604.

Without distinction between main and branch lines, Mr. McKeand's Exhibit 3 shows that the per mile average of traffic units for the track in Tennessee is only 88.4 per cent. of the per mile average for the track outside Tennessee. (McKeand affidavit, p. 10.) This computed average includes locomotive miles and train miles, and thereby unduly increases the average for Tennessee mileage. Exhibit 47 to [fol. 793-50] Mr. Hall's affidavit shows that only 15% of the system locomotives, and none of the larger ones, ever move over the branch lines, and obviously branch line trains are shorter than those on the main line. The true average per mile use of the Tennessee main tracks is only 88% of the average outside the state, computed from car miles, ton miles, and passenger miles. (McKeand, pp. 10-11.)

The combined ratio for Tennessee of car miles, ton miles and passenger miles, as shown by Mr. McKeand's Exhibit,

is 68.3%, slightly less than the traffic units reported in the tax return (69.27%) as a basis for allocating rolling stock to Tennessee, which included locomotive miles the Tennessee ratio of which was slightly above 70 per cent.

Responding to the questionnaire issued by this Commission the tax return filed by the Railway reported 1937 income and expenses for Tennessee, computed according to formulae heretofore filed with the Commission. This report showed that the net railway operating income for Tennessee mileage in 1937 was \$432,556.15, or 51.5% of the system income. (See McKeand affidavit, pp. 19-20.) Capitalized at 6% this income would fix the value of all operating property in Tennessee, including the greater portion of localized property, at \$7,269,269.

Net railway operating income per mile of main track in Tennessee, in 1937, was \$541; per mile of main track outside Tennessee, \$1,293; the per mile income in Tennessee being only 41.84% of the per mile income outside Tennessee. (McKeand, p. 20, Exhibit 8.)

[fol. 793-51] Exhibit No. 5 to Mr. McKeand's affidavit is a statement of the allocation of system property values, other than equipment, made by the Bureau of Valuation of the Interstate Commerce Commission, brought to December 31, 1937, by a continuation of investment accounts, under the supervision and direction of that Bureau. (See McKeand affidavit, pp. 13-14.) Equipment is not included, since the Bureau made no attempt to allocate equipment values among the States. Non-operating property is also omitted. The table shows the value of Tennessee operating property to be 64.11% of the system total.

Authorities on the taxation of railroad properties, whose papers have been reported in the annual proceedings of the National Tax Association, seem to be agreed that state ratios resulting from the allocations of the Bureau of Valuation are properly included in computations made to determine the proper ratio of state values to system values, for purposes of assessment.

It is submitted for the Railway that the average of the three ratios, (1) traffic units, (2) net railway operating income, and (3) investment costs as allocated by the Federal bureau, constitutes a fair and just measure for allocating present system value to Tennessee.

Accepting the ratio of traffic units as computed in the tax return at 69.27, the average of the three ratios is 62.44%.

If the Commission should deem it proper to add the Tennessee proportion of main track mileage, 71.73% as a fourth ratio, the average would be increased to 64.15%. Since [fol. 793-52] however the Bureau of Valuation allocation is directly responsive to mileage the Railway insists that the mileage ratio should not be added to the other three.

VII

Equalization

The Constitution of Tennessee does not permit classification of property for purposes of ad valorem taxation, but requires uniformity. This constitutional requirement is not met merely by assessments at actual cash value of the properties of all corporate taxpayers assessed by this Commission, when the properties of taxpayers assessed locally in the several counties and cities of the State are assessed at a fractional percentage of actual cash value.

The primary burden of ad valorem taxation results from the application of county tax rates, producing revenue for the support of county governments. Refusal of this Commission to follow local assessors by reducing its assessments to a percentage of actual cash value, would result directly in inequality of taxation in violation of constitutional direction in all counties, particularly severe and inequitable in those counties in which this company is the only rail taxpayer.

The principle invoked and its application are well established and a multiplicity of citations of supporting authority [fol. 793-53] are available. In the interest of brevity especial consideration by the Commission is requested of only two authoritative utterances of the Supreme Court in 1931.

Cumberland Coal Company v. Board of Revision etc.,
284 U. S. 23.

Iowa-Les Moines National Bank v. Bennett, 284 U. S.
239.

Cumberland Coal Co. v. Board of Revision; etc., 284 U. S. 23, opinion by Mr. Chief Justice Hughes (November, 1931) presented the claim of certain coal companies that they were the victims of discrimination in tax assessments resulting from a plan of assessment under which undeveloped coal acreage was valued at the same amount per acre "regardless of the remoteness of accessibility of the said coal to market, cost of operation, or means of transportation" etc.

The court found that the claimed discrimination resulted from a systematic plan, believed by the taxing board to be valid, and not from a mere error in judgment in following a proper method.

The decision of the court is found in the following quotation:

"* * * It is established that the intentional, systematic undervaluation by state officials of taxable property of the same class belonging to other owners contravenes the constitutional right of one taxed upon the full value of his property. (Citing cases) In *Sioux City Bridge Co. v. Dakota County*, supra (at p. 446), this Court, referring to the dilemma presented by a case where one or a few of a class of taxpayers are assessed at one hundred per cent of the value of their property pursuant to statutory requirement and the rest of the class are intentionally assessed at a lower percentage, stated the rule to be as follows: 'This [fol. 793-54] Court hold that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. *The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.*'" (Pages 28-29.)

Iowa-Des Moines National Bank v. Bennett, 284 U. S. 239, opinion by Mr. Justice Brandeis (December, 1931), reached the Supreme Court by Certiorari to the Supreme Court of Iowa.

The claimed discrimination resulted from the action of tax assessors in applying a higher tax rate to the property of state, savings and national banks than the rate applied to other competing domestic corporations, resulting from an error of tax assessors as to which of two taxing statutes was to be applied to the latter class of corporations.

The Supreme Court of Iowa, having found or assumed a systematic discrimination as charged in the bill, denied relief because it held that the state officers had been guilty of a usurpation of power in applying an erroneous tax rate to most corporations in favor of whom the discrimination had been made.

[fol. 793-55] Recognizing that the prohibition of the Fourteenth Amendment has reference exclusively to action by the State, as distinguished from action by private individuals, the Supreme Court ruled that the unwarranted action of the state taxing officers was the act of the State. The court said:

“ * * * But acts done ‘by virtue of a public position under a State Government * * * and in the name and for the State,’ *Ex Parte Virginia*, 100 U. S. 339, 347, are not to be treated as if they were the acts of private individuals, although in doing them the official acted contrary to an express command of the state law. When a state official, acting under color of state authority, invades, in the course of his duties, a private right secured by the federal Constitution, that right is violated, even if the state officer not only exceeded his authority but disregarded special commands of the state law. Here, the exaction complained of was made by the treasurer in the name of and for the State, in the course of performing his regular duties; the money is retained by the State; and the juridical power of the State has been exerted in justifying the retention. * * *” (Pages 245-246.)

It was contended in this case that the State still had power to equalize the treatment of its taxpayers by compelling additional payments on the part of those benefited by the discrimination. This possibility was held to be no obstacle to the relief sought by the petitioners (the refund of excess taxes already paid).

The Court said:

“ * * * The right invoked is that to equal treatment; and such treatment will be attained if either their competitors' taxes are increased or their own reduced. But it is well settled that a taxpayer who has been subjected to [fol. 793-56] discriminatory taxation through the favoring of others in violation of federal law, cannot be required himself to assume the burden of seeking an increase of the taxes which the others should have paid. * * *” (Citing cases.)

The proposition last stated is supported further by the opinion of Mr. Chief Justice Taft in *Sioux City Bridge Co. v. Dakota County*, (1923) 260 U. S. 441, citing *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350 and *Greene v. Louisville & Interurban R. Co.*, 244 U. S. 499, recognizing that it would

be utterly impossible for a taxpayer, whose property is discriminated against by overassessment, "by any judicial proceeding to secure an increase in the assessment of a great mass of underassessed property in the taxing district."

The principle underlying these cases was restated approvingly by the Supreme Court in *Great Northern Ry. v. Weeks*, 297 U. S. 135, 155, its most recent case on the subject.

Wray v. Railroad, 113 Tenn. 544, was decided by the Supreme Court of Tennessee in 1904. The subsequent course and history of taxation in Tennessee has merely emphasized the soundness of the observation of the Court:

"* * * This court knows judicially and as a part of the financial history of the State that land is never assessed for purposes of taxation at its real cash market value, though that may be the law, but only in comparison with other lands around it, and, if petitioner valued it, we would presume she placed such comparative value, instead of the real market value, upon it." (Page 560.)

[fol. 793-57] The affidavits and exhibits filed with the Commission in support of the Railway's "Exceptions" are clear and convincing that an assessment in excess of $66\frac{2}{3}$ per cent of the actual cash value of the Railway's property in Tennessee is unjust to it and violates the constitutional requirements of equality in assessment and in the protection of the law. We believe no contradiction can be offered to the sworn statement of Mr. Wm. R. Ponder, executive secretary of the Tennessee Taxpayers Association, made after an extensive investigation?

"The relation between the real and the assessed value of taxable property also shows a wide variation as between county and county. Among the individual counties, the basis for assessed value ranges from a low of 25 per cent to a high of 75 per cent of estimated actual value, the average in the 1937 assessment being approximately 66 per cent. * * * [Affidavit, p. 5.]

One effect of the inequality in assessment practiced throughout the state, to the particular prejudice and injury of this company, is indicated by the tables on page 4 of Mr. Ponder's affidavit (bound copy), showing a reduction in the assessment of farm property since 1920 of 49%, and re-

duction of lesser extent in the assessment of all other classes of property, while the 1937 assessment of this Railway showed an actual increase over that of 1920 by approximately 5%.

The ratio of two-thirds actual value assigned as the average for assessment purposes measures merely the average valuation on property assessed. If personal property entirely escaping assessment were added to the aggregate [fol. 793-58] of real value, it is believed the aggregate ratio of assessed values would be further increased. Note the affidavits from Lewis County that only three taxpayers of the county assessed locally are assessed with any personal property whatever. (Bound volume of affidavits, pp. 134-135.) In 1937 733 automobiles were registered in Lewis county, its population by the 1930 census being 5,258, with a per capita wealth well above the average for the state.

In the light of the evidence submitted, an assessment not in excess of 66 $\frac{2}{3}$ per cent of the value found by the Commission for the Tennessee property of this Railway is demanded by the principle of uniformity and equality required by the law as its "just and ultimate purpose." (Cumberland Coal Co. v. Board, supra.)

VIII

The West Nashville Branch

The facts with reference to the so-called West Nashville Branch are stated in Mr. Hall's affidavit, at pages 43-45.

While this mileage was included in the tax return filed by the Railway it is clearly not a main track nor a branch line and should be eliminated from the assessment rolls of the Commission.

[fol. 793-59]

IX

Recapitulation

For the Railway we respectfully submit that its several exceptions to the proposed assessment of August 22, 1938, are meritorious, are supported by the evidence before the Commission, and should be sustained.

In the supporting evidence many pertinent facts with respect to the condition and relative status of this property are shown which have not heretofore been presented to this

Commission. That its operations and profits have suffered to a greater extent than the average American railroad, during the years of economic revolution, and that its path to recovery of profitable operation in any degree is more difficult and more costly than the average American railroad, has been demonstrated by record evidence. The facts shown in evidence justify the labor expended in collecting them for presentation to the Commission, as well as the labor required for their study and consideration by the Commission, overburdened as its members are with the task of assessments.

The assessment justified by the evidence is:

Value of entire property	\$16,021,298
Less localized property	5,974,471
Value entire distributable property	10,046,827
Allocation to Tennessee of distributable property (64.15% of system value)	6,445,040
Add value of localized property in Tennessee	3,297,250
Total value all property in Tennessee	9,742,290
Assessment at 66 $\frac{2}{3}$ % of value found	6,494,860

[fol. 793-60] Respectfully submitted for The Nashville, Chattanooga & St. Louis Railway, Wm. H. Swiggart, Counsel.

[Vol. 794]

PAGE FROM EXHIBIT No. 19 TO BILL OF EXCEPTIONS.

The Nashville, Chattanooga & St. Louis Railway

Accounting Department

Nashville, Tenn.

Distribution of Railway Operating Revenues Expressed in Cents per Dollar of Gross Revenue for the N. C. & St. L. Ry. Compared with Class I Railways in the United States—Years 1935, 1936 and 1937

	1935			1936			1937	
	N. C. & St. L. Ry.	All Class I Roads	N. C. & St. L. Ry.	All Class I Roads	N. C. & St. L. Ry.	All Class I Roads	N. C. & St. L. Ry.	All Class I Roads
1. Total Operating Revenues	100	100	100	100	100	100	100	100
2. Labor (Salaries and Wages) (a)	59.1	45.0	55.0	42.9	56.4	44.8	56.4	44.8
3. Fuel (Locomotive)	6.6	5.9	6.5	5.8	6.7	6.2	6.7	6.2
4. Materials, Supplies and Miscellaneous	17.5	16.3	17.9	16.5	18.7	17.3	18.7	17.3
5. Loss and damages, injuries to persons, insurance, and pensions and uncollectible Railway revenue	2.9	2.3	2.3	2.3	2.1	1.8	2.1	1.8
6. Depreciation	4.3	5.6	3.7	4.8	3.6	4.7	3.6	4.7
7. Taxes (b)	3.7	6.9	3.8	7.9	6.1	7.8	6.1	7.8
8. Hire of Equipment and Joint Facility Net Rentals	1.6	3.5	1.0	3.3	1.5	3.2	1.5	3.2
9. Total Expenses and Taxes	95.7	85.5	90.2	83.5	94.1	85.8	94.1	85.8
10. Net Railway Operating Income	4.3	14.5	9.8	16.5	5.9	14.2	5.9	14.2

(a) Labor expenditures do not include that portion of payroll chargeable to Capital Account.

(b) Does not include Miscellaneous Tax Accruals.

Note: The foregoing table includes only labor charges made direct to Operating Expenses as such. The N. & C. figures, and it is reasonable to believe those for other class I roads as well do not include labor charges to Material and Supply and Storehouse and Shop Expense Accounts where they lose their identity as labor items and become a part of the material and shop expense costs and appear in Operating Expenses as such.

(Here follows 2 photos, side folios 795-796, 1 map, folio 797)

The Nashville, Chattanooga & St. Louis Railway

INCOME STATEMENT

FORM 4064

I. C. C. Account No.		Month of <u>AUGUST 1913.</u>			PERIOD EIGHT		
		This Year	Last Year	Increase or Decrease	This Year	Last Year	Increase or Decrease
I. OPERATING INCOME							
(a) Railway Operating Income							
Freight	101	926,700.91	915,324.09	11,376.82	7,149,663.30	7,997,610.99	847,947.69
Passenger	102	76,523.59	100,499.80	23,976.21	710,195.63	808,675.78	98,480.15
Mail	106	46,387.14	45,932.41	454.73	400,243.17	414,864.86	14,621.69
Express	107	24,319.06	17,452.68	6,866.38	197,060.42	262,342.72	65,282.30
All Other Transportation	103-105, 108-116	22,539.73	19,894.30	2,645.43	145,006.90	144,727.32	279.58
Incidental	131-143	11,228.00	12,533.72	1,305.72	147,044.32	159,366.14	12,321.82
Joint Facility—Cr	151	6,320.52	7,219.80	899.28	57,178.27	58,650.84	1,472.57
Joint Facility—Dr	152	728.93	798.54	67.61	5,251.42	5,539.58	287.94
RAILWAY OPERATING REVENUES	501	1,113,290.02	1,118,060.26	4,770.24	8,801,140.37	9,840,699.07	1,039,558.70
Maintenance of Way and Structures	I	116,210.24	140,973.36	24,763.12	947,894.67	1,196,835.28	248,940.61
Maintenance of Equipment	II	202,049.97	290,943.66	88,893.69	1,544,707.81	2,269,099.45	724,391.64
Traffic	III	61,155.22	61,798.67	643.45	518,425.02	508,356.60	10,068.42
Transportation	IV	430,473.43	456,190.61	25,717.18	3,634,373.24	3,795,803.14	161,429.90
Miscellaneous Operations	VI	6,010.75	8,709.42	2,698.67	66,393.56	64,490.99	1,902.57
General	VII	47,121.81	49,371.35	2,249.54	392,245.33	437,861.52	45,616.19
Transportation for Investment—Cr	VIII	404.26	1,770.57	1,276.21	2,815.47	7,352.06	4,536.59
RAILWAY OPERATING EXPENSES	531	862,527.06	1,006,216.50	143,689.44	7,101,208.16	8,265,094.92	1,163,886.76
NET REVENUE FROM RAILWAY OPERATIONS		250,762.96	111,843.76	138,919.20	1,699,932.21	1,575,604.15	124,328.06
Railway Tax Accruals	532	75,250.95	75,590.54	339.59	600,054.44	598,136.59	1,917.85
RAILWAY OPERATING INCOME		175,512.01	36,253.22	139,258.79	1,099,877.77	977,467.56	122,410.21
(b) Rent Income							
Hire of Freight Cars—Credits	503	38,219.82	85,544.50	49,324.68	300,573.60	508,884.37	208,310.77
Rent from Locomotives	504	1,302.72	1,621.74	319.02	10,676.22	13,527.36	2,851.14
Rent from Passenger Train Cars	505	8,926.84	11,110.06	2,183.22	91,340.04	102,301.39	10,961.35
Rent from Floating Equipment	506	.00	.00	.00	.00	.00	.00
Rent from Work Equipment	507	1,738.15	2,402.45	664.30	9,209.93	12,829.92	3,619.99
Joint Facility Rent Income	508	26,350.78	27,310.01	959.23	203,883.14	203,878.37	4.77
TOTAL RENT INCOME		74,538.31	127,988.76	53,450.45	615,688.93	841,421.41	225,732.48
(c) Rents Payable							
Hire of Freight Cars—Debits	536	66,122.23	72,567.41	6,445.18	591,369.35	690,785.15	99,415.84
Rent for Locomotives	537	839.73	599.38	240.35	6,728.77	5,290.11	1,438.66
Rent for Passenger Train Cars	538	14,008.83	14,007.59	1.25	126,882.59	112,387.50	14,495.09
Rent for Floating Equipment	539	.00	675.00	675.00	.00	675.00	675.00
Rent for Work Equipment	540	22.31	56.96	34.65	511.26	405.16	106.10
Joint Facility Rents	541	13,017.54	11,806.11	1,211.53	87,548.77	79,695.74	7,853.03
TOTAL RENTS PAYABLE		94,010.74	99,712.44	5,701.70	813,040.74	889,238.70	76,197.96
NET RENTS		19,472.43	28,276.32	8,803.89	197,351.81	47,817.29	149,534.52
NET RAILWAY OPERATING INCOME		155,039.58	64,529.54	91,510.04	902,525.96	929,650.27	27,124.31
II. OTHER INCOME							
Revenues from Miscellaneous Operations	502	.00	.00	.00	.00	.00	.00
Income from Lease of Road	509	400.35	400.35	.00	3,456.48	3,460.70	4.22
Miscellaneous Rent Income	510	3,238.11	2,920.37	317.74	27,835.04	32,863.29	5,028.25
Miscellaneous Non-Operating Physical Property	511	8,041.32	7,741.04	300.28	57,115.75	57,115.75	.00

Incidental	131-143	44,227.73	49,094.50	2,045.43	145,006.90	144,727.32	279.58
Joint Facility—Cr.	151	11,228.00	12,533.72	1,305.72	147,044.32	159,366.14	12,321.82
Joint Facility—Dr.	152	6,320.52	7,219.80	899.28	57,178.27	58,650.84	1,472.57
RAILWAY OPERATING REVENUES	501	728.93	799.54	67.61	5,251.84	5,539.58	287.74
		1,113,290.02	1,118,060.26	4,770.24	8,801,140.37	9,840,699.07	1,039,558.70
Maintenance of Way and Structures	I	116,210.24	140,973.36	24,763.12	947,814.67	1,196,835.28	248,940.61
Maintenance of Equipment	II	202,049.97	290,943.66	88,893.69	1,544,707.81	2,269,099.45	724,391.64
Traffic	III	61,155.22	61,798.67	643.45	518,425.02	508,356.60	10,068.42
Transportation	IV	430,473.43	456,190.61	25,717.18	3,634,373.24	3,795,803.14	161,429.90
Miscellaneous Operations	VI	6,010.75	8,709.42	2,698.67	66,393.56	64,490.99	1,902.57
General	VII	47,121.81	49,371.35	2,249.54	392,249.33	437,861.52	45,612.19
Transportation for Investment—Cr.	VIII	404.26	1,770.57	1,276.21	2,835.47	7,352.06	4,516.59
RAILWAY OPERATING EXPENSES	534	862,527.06	1,006,216.50	143,689.44	7,101,208.16	8,265,094.92	1,163,886.76
NET REVENUE FROM RAILWAY OPERATIONS		250,762.96	111,843.76	138,919.20	1,699,932.21	1,575,604.15	124,328.06
Railway Tax Accruals	532	75,250.95	75,590.54	339.59	608,054.44	598,136.59	9,917.85
RAILWAY OPERATING INCOME		175,512.01	36,253.22	139,258.75	1,091,877.77	977,467.56	122,410.21
(b) Rent Income							
Hire of Freight Cars—Credits	503	36,219.82	85,544.50	49,324.68	300,573.60	509,884.37	208,310.77
Rent from Locomotives	504	1,302.72	1,621.74	339.02	10,676.22	13,527.36	2,851.14
Rent from Passenger Train Cars	505	8,926.84	11,110.06	2,183.22	91,340.04	102,301.39	10,961.35
Rent from Floating Equipment	506	.00	.00	.00	.00	.00	.00
Rent from Work Equipment	507	1,738.15	2,402.45	664.30	9,209.93	12,829.92	3,619.99
Joint Facility Rent Income	508	26,350.78	27,310.01	959.23	203,889.14	203,878.37	10.77
TOTAL RENT INCOME		74,538.31	127,988.76	53,450.45	615,685.93	841,421.41	225,732.48
(c) Rents Payable							
Hire of Freight Cars—Debits	536	66,122.23	72,567.41	6,445.18	591,369.35	690,785.15	99,415.84
Rent for Locomotives	537	839.73	599.38	240.35	6,728.77	5,290.11	1,438.66
Rent for Passenger Train Cars	538	14,008.83	14,007.58	1.25	126,882.59	112,387.50	14,495.09
Rent for Floating Equipment	539	.00	675.00	675.00	.00	675.00	675.00
Rent for Work Equipment	540	22.31	56.96	34.65	511.26	405.16	106.10
Joint Facility Rents	541	13,017.54	11,806.11	1,211.53	87,548.77	79,695.74	7,853.03
TOTAL RENTS PAYABLE		94,010.74	99,712.44	5,701.70	813,040.74	889,238.70	76,187.96
NET RENTS		19,472.43	28,276.32	47,748.75	197,351.81	47,817.29	149,534.52
NET RAILWAY OPERATING INCOME		155,039.58	64,529.54	91,510.04	902,525.96	929,650.27	27,124.31
II. OTHER INCOME							
Revenues from Miscellaneous Operations	502	.00	.00	.00	.00	.00	.00
Income from Lease of Road	509	400.35	400.35	.00	3,456.48	3,460.70	4.22
Miscellaneous Rent Income	510	3,238.11	2,920.37	317.74	27,835.04	32,863.29	5,028.25
Miscellaneous Non-Operating Physical Property	511	8,043.32	7,746.98	296.34	52,117.52	48,900.86	3,216.66
Separately Operated Properties—Profits	512	.00	.00	.00	.00	.00	.00
Dividend Income	513	.00	.00	.00	5,598.50	5,431.00	167.50
Income from Funded Securities	514	5,794.20	6,133.35	339.15	49,742.49	50,820.97	1,078.48
Income from Unfunded Securities and Accounts	515	1,272.60	1,786.60	514.00	10,828.93	26,554.15	15,725.22
Income from Sinking and Other Reserve Funds	516	.00	.00	.00	.00	.00	.00
Release of Premiums on Funded Debt	517	.00	.00	.00	.00	.00	.00
Contributions from Other Companies	518	.00	.00	.00	.00	.00	.00
Miscellaneous Income	519	3.70	3.70	.00	29.60	29.60	.00
TOTAL OTHER INCOME		18,752.28	18,991.35	239.07	149,608.56	168,060.57	18,452.63
TOTAL INCOME		174,791.86	83,520.89	91,749.11	1,052,134.52	1,097,710.84	45,576.94

PAGE FROM EXHIBIT NO.19 TO BILL OF EXCEPTIONS
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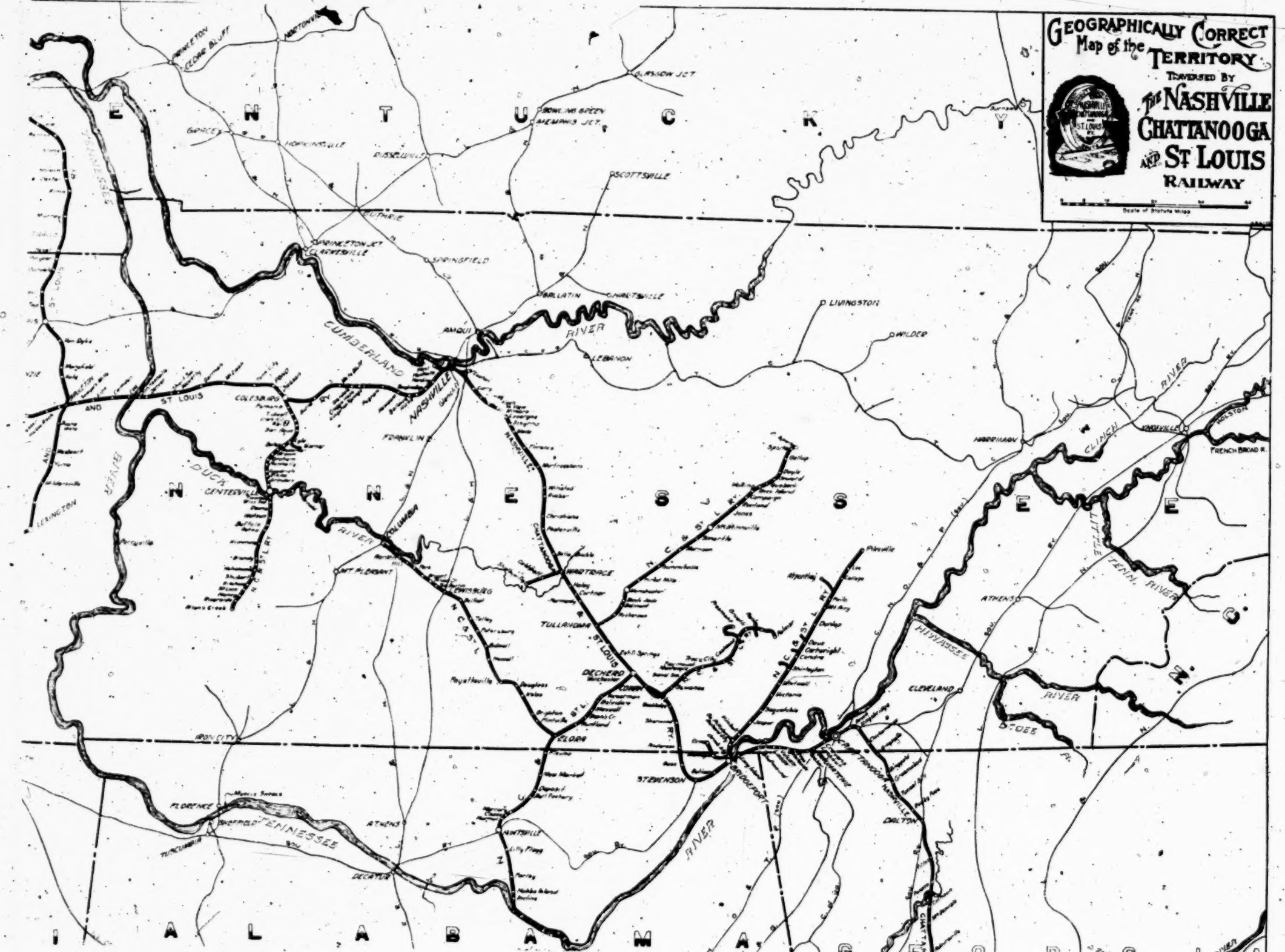
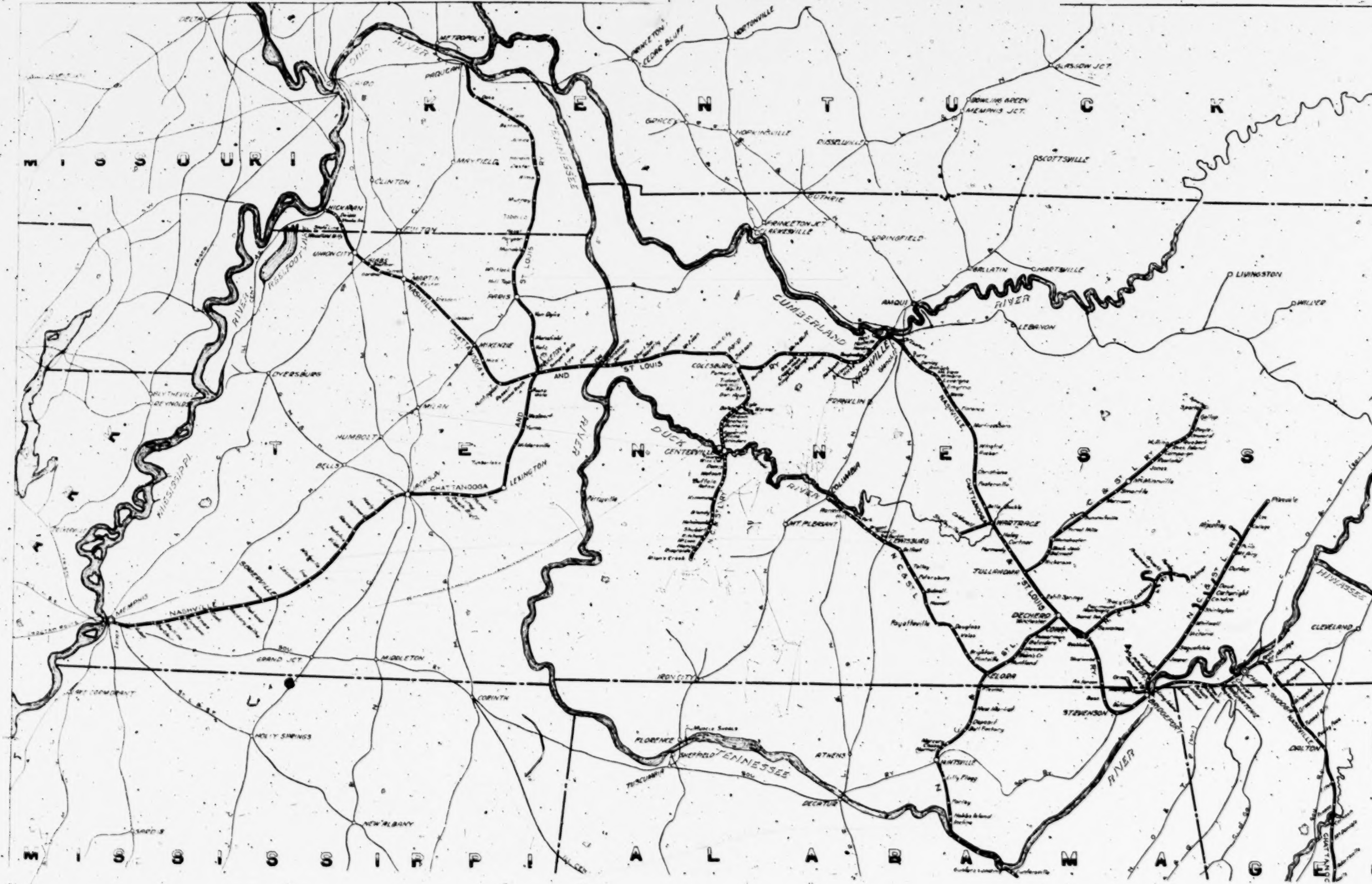
The Nashville, Chattanooga & St. Louis Railway
INCOME STATEMENT

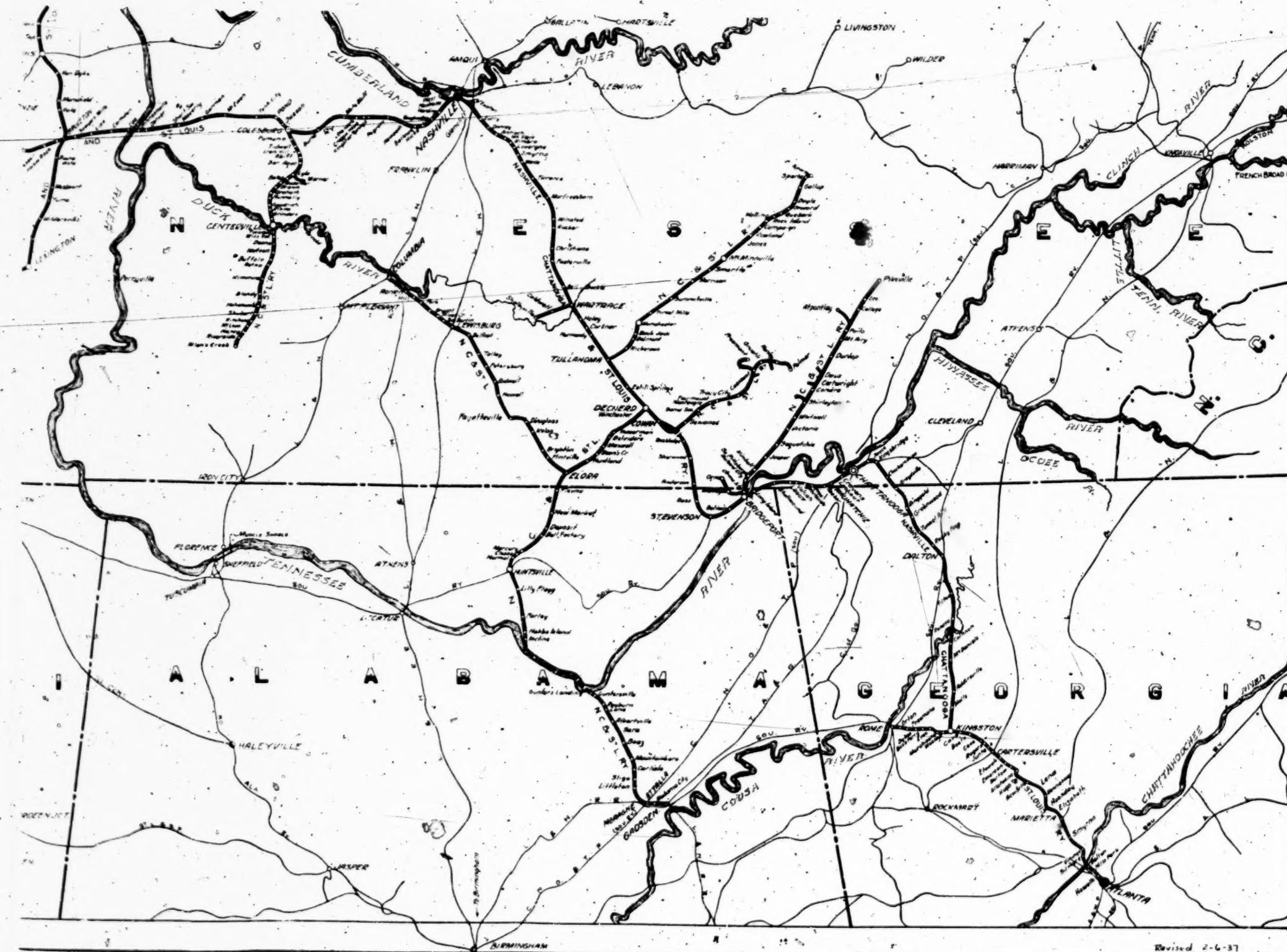
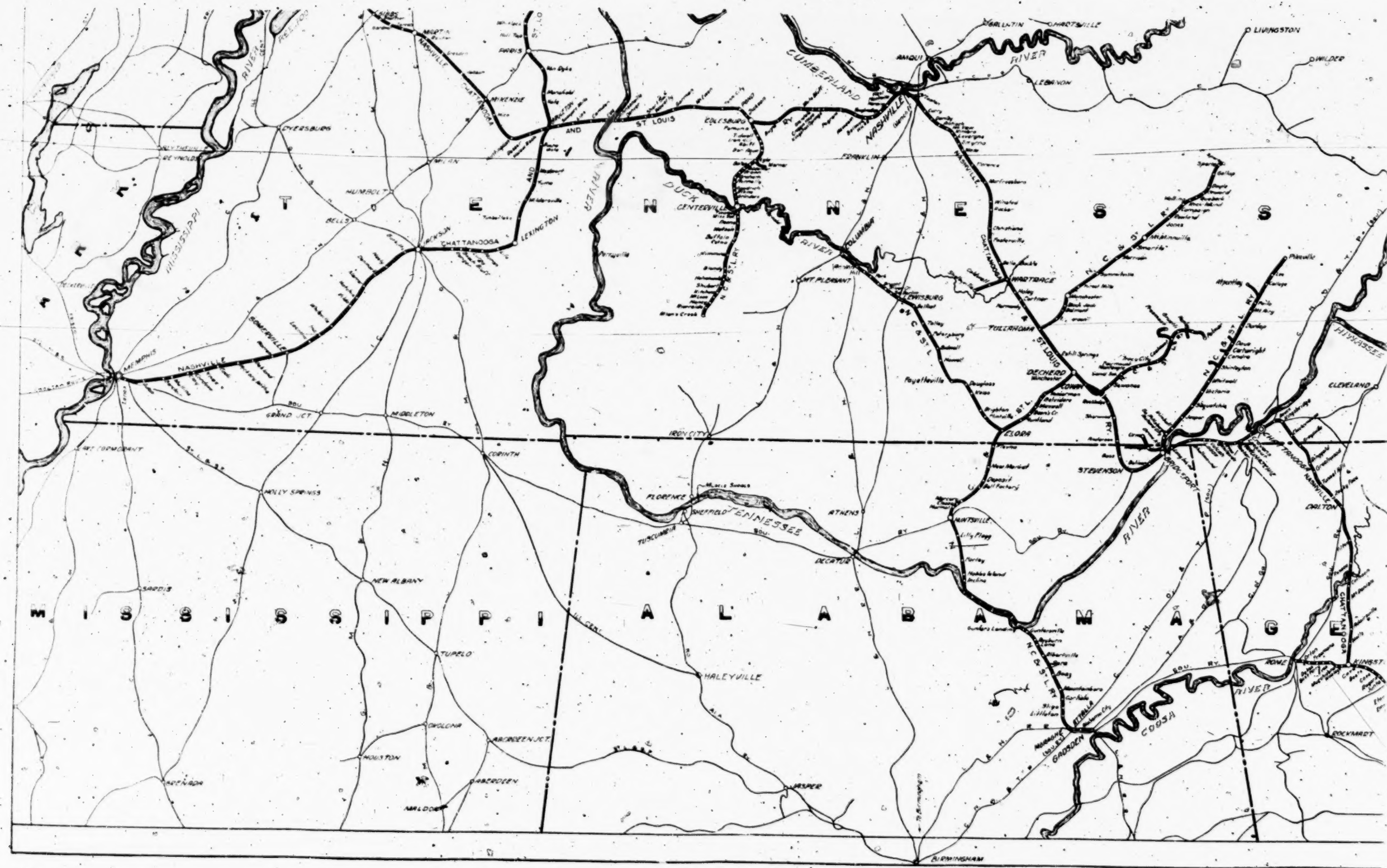
FORM 100

ITEMS	I. C. C. Account No.	Month of <u>AUGUST 1938.</u>			PERIOD EIGHT			Months
		This Year	Last Year	Increase or Decrease	This Year	Last Year	Increase or Decrease	
III. MISCELLANEOUS DEDUCTIONS FROM INCOME								
Expenses of Miscellaneous Operations	534							
Taxes on Miscellaneous Operating Property	535							
Miscellaneous Rents	543				96.50	96.50		
Miscellaneous Tax Accruals	544	5,002.14	5,043.67	41.53	38,029.66	36,883.51	1,146.15	
Separately Operated Properties—Loss	545							
Maintenance of Investment Organizations	549							
Income Transferred to Other Companies	550							
Miscellaneous Income Charges	551							
TOTAL MISCELLANEOUS DEDUCTIONS		5,002.14	5,043.67	41.53	38,126.16	36,980.01	1,146.15	
INCOME AVAILABLE FOR FIXED CHARGES		169,769.72	78,477.22	91,312.50	1,014,500.36	1,060,730.83	46,222.47	
IV. FIXED CHARGES								
Rent for Leased Roads	542	67,208.85	68,322.65	1,113.80	537,670.80	544,670.04	6,999.24	
Interest on Funded Debt	546							
(a) Fixed Interest		57,470.00	58,025.00	555.00	459,970.00	460,157.50	187.50	
Interest on Unfunded Debt	547	220.89	68.10	152.79	795.16	2,251.28	1,456.12	
Amortization of Discount on Funded Debt	548							
TOTAL FIXED CHARGES		124,899.74	126,415.75	1,516.01	998,435.96	1,007,078.82	8,642.86	
INCOME AFTER FIXED CHARGES		44,869.98	47,938.53	92,828.51	15,572.40	53,652.01	38,079.61	
V. CONTINGENT CHARGES								
Interest on Funded Debt	546							
(b) Contingent Interest								
NET INCOME		44,869.98	47,938.53	92,828.51	15,572.40	53,652.01	38,079.61	
VI. DISPOSITION OF NET INCOME								
Income Applied to Sinking and Other Reserve Funds	552							
Dividend Appropriations of Income	553							
Income Appropriated for Investment in Physical Property	554							
Stock Discount Extinguished Through Income	555							
Miscellaneous Appropriations of Income	556							
TOTAL APPROPRIATIONS OF INCOME		.00	.00	.00	.00	.00	.00	
Net Income Balance Transferred to Profit and Loss	502	44,869.98	47,938.53	92,828.51	15,572.40	53,652.01	38,079.61	
*If a loss the amount shall be shown in red								

*If a loss the amount shall be shown in red

Miscellaneous Rents	543	.00	.00	.00	96.50	96.50	
Miscellaneous Tax Accruals	544	5,002.14	5,043.67	41.53	38,029.66	36,883.51	1,146.15
Separately Operated Properties—Loss	545						
Maintenance of Investment Organizations	549						
Income Transferred to Other Companies	550						
Miscellaneous Income Charges	551						
TOTAL MISCELLANEOUS DEDUCTIONS		5,002.14	5,043.67	41.53	38,126.16	36,980.01	1,146.15
INCOME AVAILABLE FOR FIXED CHARGES		169,709.72	78,427.22	91,312.56	1,074,500.36	1,060,730.83	45,722.47
IV. FIXED CHARGES							
Rent for Leased Roads	542	67,208.85	68,322.65	1,113.80	537,670.80	544,670.04	6,999.24
Interest on Funded Debt	546						
(a) Fixed Interest		57,470.00	58,025.00	555.00	459,970.00	460,157.50	187.50
Interest on Unfunded Debt	547	220.89	68.10	152.79	795.16	2,251.28	1,456.12
Amortization of Discount on Funded Debt	548						
TOTAL FIXED CHARGES		124,899.74	126,415.75	1,616.01	998,435.96	1,007,078.82	8,642.86
INCOME AFTER FIXED CHARGES		44,889.98	47,938.53	92,828.51	15,572.40	53,652.01	38,079.61
V. CONTINGENT CHARGES							
Interest on Funded Debt	546						
(b) Contingent Interest							
NET INCOME		44,889.98	47,938.53	92,828.51	15,572.40	53,652.01	38,079.61
VI. DISPOSITION OF NET INCOME							
Income Applied to Sinking and Other Reserve Funds	552						
Dividend Appropriations of Income	553						
Income Appropriated for Investment in Physical Property	554						
Stock Discount Extinguished Through Income	555						
Miscellaneous Appropriations of Income	556						
TOTAL APPROPRIATIONS OF INCOME		.00	.00	.00	.00	.00	.00
NET INCOME Balance Transferred to Profit and Loss	602	44,889.98	47,938.53	92,828.51	15,572.40	53,652.01	38,079.61
*If a loss the amount shall be shown in red.							
SUPPLEMENTARY STATEMENT OF SPECIFIED INCOME ITEMS							
(a) Net Railway Operating Income		156,039.58	64,529.54	91,510.04	902,525.96	929,650.27	27,124.31
Add Depreciation—Way and Structures		.00	.00	.00	.00	.00	.00
Add Depreciation—Equipment		43,233.36	44,431.73	1,198.37	345,982.43	343,555.77	2,426.66
NET RAILWAY OPERATING INCOME BEFORE DEPRECIATION		199,272.94	108,961.27	90,311.67	1,248,508.39	1,273,206.04	24,697.65
(b) Net Income		44,889.98	47,938.53	92,828.51	15,572.40	53,652.01	38,079.61
Add Federal Income Tax		.00	.00	.00	.00	.00	.00
NET INCOME BEFORE FEDERAL INCOME TAX		44,889.98	47,938.53	92,828.51	15,572.40	53,652.01	38,079.61
(c) Net Income		44,889.98	47,938.53	92,828.51	15,572.40	53,652.01	38,079.61
Add Depreciation—Way and Structures		.00	.00	.00	.00	.00	.00
Add Depreciation—Equipment		43,233.36	44,431.73	1,198.37	345,982.43	343,555.77	2,426.66
Add Federal Income Tax		.00	.00	.00	.00	.00	.00
NET INCOME BEFORE DEPRECIATION AND FEDERAL INCOME TAX		88,123.34	3,506.80	91,630.14	361,554.83	397,207.78	55,652.95





[fol. 798] Page 4 of Exhibit No. 19 to the Bill of Exceptions. Filed June 28th, 1939. David S. Lansden, Clerk.

Filed 1/24/39. Hugh Freeman, Clerk, by W. R. Ahearn, Clerk.

Any formula for assessing Railway property for taxation which could not be used in fat years as well as in lean years should be condemned.

Had the formula proposed by the Nashville, Chattanooga and St. Louis Railway been used in 1929, the assessed value of the distributable property would have been more than \$43,000.00 per mile in lieu of \$23,639.00 per mile as assessed. A formula which would have the effect of allowing vacant non-operating property in Chattanooga, \$1,684,994.00 worth of material and supplies and \$1,526,562.00 in cash in Tennessee banks, escape taxation entirely, should be condemned.

It would not tend to equalize taxes if one Railroad is assessed on one basis and all other Railroads are assessed on an entirely different basis. If the basis suggested by the Nashville, Chattanooga & St. Louis Railway were applied to the Clinchfield Railroad, the value of its distributable property would be more than \$115,000.00 per mile in lieu of \$40,000.00 per mile, yet the Clinchfield has not for sometime earned its fixed charges.

The Nashville Chattanooga & St. Louis Railway is now making its fixed charges, and the assessment is only \$16,158.00 per mile.

[fol. 799] IN SUPREME COURT OF THE UNITED STATES

STIPULATION RE ORIGINAL TAX RETURN—Filed February 13, 1940

The Presiding Justice of the Supreme Court of Tennessee having directed, pursuant to Rule 10, paragraph 4, of the Rules of the Supreme Court of the United States, that the original tax return filed by the petitioner, The Nashville, Chattanooga & St. Louis Railway, be filed as a part of the record in this Court, in support of the petition for certiorari of said petitioner, it is stipulated that said original tax return may be treated as a part of the record without the necessity of printing; provided that the right is reserved in

either party to require the printing of said original tax return if it shall subsequently appear necessary or proper so to do.

Executed at Nashville, Tennessee, this February 9, 1940.

Wm. H. Swiggart, Attorney for Petitioner. W. W.
Barry, Attorney for Respondents.

(6326)

[fol. A] EXHIBIT NO. 1 TO BILL OF EXCEPTIONS

Summary of N. C. & St. L. Ry.'s Tax Return
1938-1939

Division	Page	Distributable	Localized	Total
Chattanooga	24	\$3,946,245	\$800,470	\$4,746,715
Western & Atlantic	35	471,315	589,770	1,061,085
Joint Prop. Nashville	37	23,398	113,795	137,193
Nashville	39	3,358,310	528,565	3,886,875
Paducah & Memphis	49	1,883,970	213,890	2,097,860
Shelbyville	56	31,755	6,495	38,250
McMinnville	57	263,435	39,180	302,615
Columbia	60	361,735	22,825	384,560
Huntsville	64	8,850	25	8,875
Tracy City	65	178,560	24,880	203,440
Squatchie Valley	67	240,675	17,080	257,755
Orme	70	7,560	2,680	10,240
Centreville	71	199,245	24,590	223,835
West Nashville	74	49,110	3,150	52,260
Total		\$11,024,163	\$2,387,395	\$13,411,558

[fol. 1] THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

Answers to Interrogatories

Class "A"

Question 1. Name of organization. Date of organization.
Date of charter.

Question 2. Under laws of what Government, State or Territory organized? Give reference to each statute and amendment thereto.

Question 3. If a consolidated corporation, name the constituent companies, with complete reference to charter of each, and all amendments thereto, and to the statutes under which said charters and amendments were obtained. The date and authority for each consolidation.

Question 4. If a reorganized corporation, give name of original corporation, with reference to laws under which it was organized and date of organization.

Question 5. Charter name, with reference to the date of charter—date of organization, and laws under which obtained—for each line, division, branch, railroad or railway now forming a part of the lines of your corporation.

Answers 1-5 (inclusive):

Under acts of 1845-46, Chapter 1, of the General Assembly of the State of Tennessee, approved December 11th, 1845,

"The Nashville & Chattanooga Railroad Company" was chartered to construct a line from Nashville, Tennessee, to Chattanooga, Tennessee. The organization of the company was perfected January 24th, 1848. By decree of the Chancery Court at Nashville, Tennessee, May 31st, 1873, the name of the corporation was changed to "The Nashville, Chattanooga & St. Louis Railway." The Alabama Act No. 123 passed 1849-50, granted the company the right to build through Jackson County, Alabama. This Act was amended [fol. 2] by an Act of the General Assembly of Alabama, No. 216, 1859-60, granting the company the right to build a line of railroad through Bridgeport, Alabama, to the Tennessee State line, in the direction of Jasper, Tennessee. Under this amendment, the line from Bridgeport to Jasper was completed October, 1867. Under an Act of the General Assembly of the State of Georgia, approved December 29th, 1847, the company was given the right to survey and build its lines through Dade County, Georgia.

Nashville & Northwestern Railroad Company was chartered under an Act of the General Assembly of the State of Tennessee, January 22, 1852 (Acts of Tennessee 1851-52, Chapter 74). The charter of this company was re-enacted and adopted by the Legislature of Kentucky March 8th, 1856 (Acts 1855-56, p. 80).

The Nashville & Northwestern Railroad Company purchased the Hickman & Obion Railroad during the year 1855. This now comprises the main line from Nashville, Tennessee, to Hickman, Kentucky. The Nashville & Northwestern Railroad Company was sold to the Nashville and Chattanooga Railroad Company through the Chancery Court at Nashville, Tennessee, the sale being confirmed November 21st, 1872.

Hickman and Obion Railroad Company was chartered December 20th, 1853, by an Act of the General Assembly of Tennessee, 1853-54, Chapter 307, page 685, and by Acts of Kentucky 1853-54, Chapter 781, page 348, to build a line from Hickman, Kentucky, to the Mobile & Ohio Railroad in Obion County, Tennessee. The railroad and property of this company were sold to the Nashville & Northwestern Railroad under authority of Acts of Tennessee 1855-56, [fol. 3] Chapter 21, page 3 passed November 16th, 1855.

The Tracy City Branch from Cowan to Tracy City was originally constructed by the Sewanee Mining Company under charter granted by the Acts of Tennessee, February

10th, 1852. (Acts of 1851-52, Chapter 284, page 521. Later amended by Acts of 1853-54, Chapter 298, page 620).

Sequatchie Valley Branch, from Bridgeport to Pikeville, was constructed from Bridgeport to Jasper under an amended Act of the General Assembly of Tennessee, No. 216, 1859-60. The line from Jasper to Pikeville was constructed under the charter of the Sequatchie Valley Railroad Company granted by an Act of the General Assembly of Tennessee, December 9th, 1868, Chapter 11, page 93.

The Orme (Dorans Cove) Branch was constructed by the Needmore Coal Company, a corporation, chartered under the laws of the State of Tennessee, May 18th, 1900. On May 9th, 1904, this line, which extends from a point on the Sequatchie Valley Branch near Bridgeport, Alabama, to Orme, Tennessee, was purchased by The Nashville, Chattanooga & St. Louis Railway from the Campbell Coal & Coke Company, a corporation chartered September 13th, 1900, under the laws of Georgia, which had purchased it from the Needmore Coal Company.

The Centreville Branch, extending from Dickson to Allens Creek, Tennessee, was constructed under the charters of the Nashville & Tuscaloosa Railroad Company and the Southern Iron Company, Nashville and Tuscaloosa Railroad Company was chartered under the General Acts of Tennessee, 1875, Chapter 142. By deeds March 13th, 1883, and June 20th, 1884, its line from Dickson to the Lewis County line was conveyed to The Nashville, Chattanooga & St. Louis Railway. The Southern Iron Company was [fol. 4] chartered February 26th, 1889, under the laws of the State of Alabama. Its line from Kimmins to Allens Creek was purchased by The Nashville, Chattanooga & St. Louis Railway as per deed dated September 24th, 1892.

The McMinnville Branch extends from Tullahoma to Sparta in White County, Tennessee, and is made up of the following: McMinnville & Manchester Railroad, chartered by an Act of the General Assembly of Tennessee, February 4th, 1850, Chapter 259, page 497, Tullahoma to McMinnville. On July 10th, 1875, this railroad was sold through the Chancery Court of Davidson County, Tennessee, and title vested in the Memphis & Charleston Railroad Company. It was sold by that company to The Nashville, Chattanooga & St. Louis Railway, July 28th, 1877. The Southwestern Railroad Company was chartered under an Act of the General Assembly of Tennessee, January 31, 1852, Chapter 269, page

462. On July 6, 1871, this company was sold through Chancery Court, Davidson County, Tennessee, at which sale it became its own purchaser. During the year 1877, this property, franchise etc. was sold to The Nashville, Chattanooga & St. Louis Railway. Under its charter, the line from McMinnville to Sparta was built. Bon Air Railway was chartered November 28th, 1887, under the General Acts of Tennessee, Chapter 142, Section 6. This Railway was sold to The Nashville, Chattanooga & St. Louis Railway as per deed dated December 3rd, 1887. Under this charter, the line from Sparta to the terminus in the Bon Air Coal fields of Eastland and Ravenscroft, was built, but this latter line was abandoned in 1937.

The Fayetteville & Columbia Branch, extending from Decherd to Columbia, was constructed under charters of [fol. 5] Winchester & Alabama Railroad and Duck River Valley Narrow Gauge Railroad Company. The Winchester & Alabama Railroad Company was chartered by Acts of General Assembly of Tennessee, February 9th, 1850, Chapter 56, Section 6; revised by Act passed December 5th, 1851, and again by Act of 1851-52, Chapter 6, page 310. Under this charter, the line from Decherd to Fayetteville was built. This road was sold through Chancery Court, Nashville, Tennessee, decree dated June 28th, 1875, to Memphis & Charleston Railroad Company and by that company to The Nashville, Chattanooga & St. Louis Railway on July 28th, 1877. Duck River Valley Narrow Gauge Railroad Company was chartered by the Chancery Court at Waverly, Tennessee, November 4th, 1872. Its property was sold to The Nashville, Chattanooga & St. Louis Railway November 23rd, 1877. Under this charter, the line from Columbia to Fayetteville was constructed.

The Huntsville & Gadsden Branch, which extends from Elora, Tennessee, to the Tennessee River, and from the Tennessee River to Gadsden, Alabama, was constructed under charters of the Winchester & Alabama Railroad Company. The original charter of the Winchester & Alabama Railroad was granted by an Act of the General Assembly of the State of Tennessee, February 9th, 1850, Chapter 56, Section 6. Under this charter, the line from Elora to the Alabama State line was built. The Huntsville & Elora Railroad Company was chartered by the Acts of the General Assembly of the State of Alabama, No. 163, page 289, February 8th, 1887. Under this charter, the line was built from

Huntsville to the Alabama State line in the direction of Elora, Tennessee. The Tennessee & Coosa Railroad Company was chartered under special act of the State of Alabama, January 16th, 1844 (Acts 1844-45, N. 220 page 170). Under this charter the line from Gadsden to the Tennessee [fol. 6] River and from the River to Huntsville, was constructed. The properties and franchises of these three underlying corporations were acquired by purchase of The Nashville, Chattanooga & St. Louis Railway and conveyed to it by deeds on July 28th, 1877, October 28th, 1877, and April 6th, 1891, respectively.

The Lebanon Branch, extending from Nashville to Lebanon, Tennessee, was abandoned during the year 1935.

The Rome Branch, extending from Rome to Kingston, Georgia, was originally the Memphis Branch Railroad and Steamboat Company of Georgia, chartered under an Act of the General Assembly of Georgia, December 21, 1839, page 105. On January 16th, 1850, Acts of Georgia, 1849-50, page 243, the name of the corporation was changed to the Rome Railroad Company. This road was purchased by The Nashville, Chattanooga & St. Louis Railway as per deed dated December 31, 1896.

The West Nashville Branch was originally chartered as the West Nashville Railway March 17th, 1887, under General Acts of Tennessee, 1875, chapter 142. The road was purchased by the Nashville Land Improvement Company, a corporation, chartered under the laws of Tennessee June 1, 1887. It was sold by it to The Nashville, Chattanooga & St. Louis Railway July 6th, 1887.

The Shelbyville Branch, extending from Wartrace to Shelbyville, was built by the Nashville and Chattanooga Railroad Company under and pursuant to an act of the Legislature of Tennessee, 1849-1850, Chapter 266, Section 3, passed January 19th, 1850.

Question 6. If any part of the line owned or leased by you is leased to another, give to whom leased—date of lease, period of run—nature of lease—annual compensation received during preceding year—to whom it is assessed for taxation.

Answer 6. This company leases none of its properties to [fol. 7] other Carriers, except on a joint user basis, such as trackage rights. The properties are all assessed for taxation to The Nashville, Chattanooga & St. Louis Railway.

Question 7: If you lease any part of the line operated by you, give from whom leased—date of lease—period of run—nature of lease—annual compensation paid during preceding year. If the leased property is returned for taxation by your company, you must answer each and every interrogatory set out herein pertaining to same as though you owned the property.

Answer 7. The Paducah & Memphis Division embraces the line from Paducah to Memphis. This division is leased from the Louisville & Nashville Railroad Company for ninety-nine years from December 14, 1895, at a rental equivalent to five per cent on the cost of the road and five per cent additional on the cost of all improvements and betterments. It is composed of the Paducah, Tennessee & Alabama Railroad Company organized July 15, 1889, under the general laws of Tennessee, extending from Paducah, Kentucky, to Lexington, Tennessee, and the Tennessee Midland Railway Company, organized February 16th, 1887, under the general laws of Tennessee, extending from Memphis to Perryville, Tennessee. From Lexington to Perryville was abandoned in 1936.

The Western & Atlantic Railroad, extending from Atlanta, Georgia, to Chattanooga, Tennessee, was built and owned by the State of Georgia. It was leased to The Nashville, Chattanooga & St. Louis Railway from December 27th, 1890 to December 27th, 1919, at a rental of \$35,001.00 per month. This lease was renewed for a term of fifty (50) years expiring December 27th, 1969. The lease includes all property of the State pertaining to the Western & Atlantic Railroad, except two lots in the City of Chattanooga. The lease provides that we pay into the State Treasury, \$45,000.00 per month and credit annually to an account called "Additions and Betterments of the Western & Atlantic Railroad" such an amount as will show at the end of any year during the term of the lease, that there has been credited an aggregate amount equal to \$60,000.00 multiplied by the number of years the lease has to run. Such additions to become the property of the State.

[fol. 9]

Class "B"

Question 1 $\frac{1}{2}$ Mileage operated on January 10 of assessment years, by railroads, lines, divisions and branches forming a part of your system.

Question 2. Number of miles owned outright or through ownership of entire capital stock, by railroads, lines, divisions and branches.

Question 3. Number of miles owned outright or through ownership of entire capital stock and operated by your company, by railroads, lines, divisions and branches.

Question 4. Number of miles owned outright or through ownership of entire capital stock or through virtual ownership by reason of a long term lease (ninety-nine years or over) by railroads, lines, divisions and branches.

Question 5. Number of miles owned outright or through ownership of entire capital stock or through virtual ownership by reason of a long term lease (ninety-nine years or over) and operated by your company, by railroads, lines, divisions and branches.

Question 6. Average number of miles operated during preceding year by railroads, lines, divisions or branches.

Question 7. Mileage in Tennessee by divisions, lines, railroad or branch, together with the total mileage of each division, line, railroad or branch, all, or any part of which is in Tennessee.

Question 8. Total number of miles of side line of each railroad line, division or branch forming a part of your system.

Question 9. Number of miles of side line in Tennessee of each railroad, line, division or branch.

Question 10. Total number of miles of additional main track, mileage of each railroad, line, division or branch.

Question 11. Number of miles of additional main track mileage in Tennessee of each railroad, line, division or branch.

Answer—The following page shows all the information called for in Questions B-1 to B-11.

[fol. 10]

The Nashville, Chattanooga & St. Louis Railway
Mileage January 10, 1938.

Main Line.....	1115.35
Side Line.....	549.18
Total.....	1664.53

Main Line					
	Tennessee	Georgia	Alabama	Kentucky	Total
Chattanooga Division	124.87	2.73	24.11		151.71
Nashville Division	160.99			10.52	171.51
Western & Atlantic Div.	15.45	121.40			136.85
Paducah & Memphis Div.	180.63			49.24	229.87
Shelbyville Branch	8.44				8.44
McMinnville Branch	60.86				60.86
Columbia Branch	85.78				85.78
Huntsville Branch	2.58		77.90		80.48
Tracy City Branch	39.18				39.18
Sequatchie Valley Br.	54.78		2.90		57.68
Orme (Dorans Cove) Br.	2.03		8.39		10.42
Centreville Branch	60.78				60.78
West Nashville Branch	2.65				2.65
Rome Branch		18.14			18.14
Total	800.02	142.27	113.30	59.76	1115.35
Side Track and Second Track					
Chattanooga Division	133.43	4.09	24.37		161.89
Nashville Division	92.34			2.25	94.59
Western & Atlantic Div.	5.21	89.80			95.01
Paducah & Memphis Div.	51.78			15.26	67.04
Shelbyville Branch	4.30				4.30
McMinnville Branch	13.33				13.33
Columbia Branch	12.41				12.41
Huntsville Branch	0.74		18.67		19.41
Tracy City Branch	14.56				14.56
Sequatchie Valley Br.	14.37		0.97		15.34
Orme (Dorans Cove)	0.98		1.29		2.27
Centreville Branch	11.27				11.27
West Nashville Branch	18.14				18.14
Rome Branch		4.02			4.02
Total	372.86	97.91	45.30	17.51	533.58
Joint tracks—Nashville	15.60				15.60

(NC&STLRY'S portion)

[fol. 11] Question 12. Actual cash value per mile of main line—additional main track and side line by railroad, line, division or branch.

Question 13. Number of miles of main line—additional main track and side line in each County and in each incorporated town in Tennessee—by railroad, line, division and branch and its actual cash value.

Answers 12 and 13. This information is to be found as a heading for each division and branch as the same are taken up. See index in front of book for various branches.

Class "C"

Question 1. Full list of rolling stock with the actual cash value shown opposite each item.

Answer 1. The following two pages answer this question. The values shown are the values reflected by the books of

the company, kept in accordance with the classification of accounts for maintenance of equipment promulgated by the Interstate Commerce Commission, that is, the values shown are the present book values found by following the instructions of said Commission relating to deducting from the original cost a uniform monthly charge for replacement reserve.

Question 2. Does the markings of your company appear upon any rolling stock which is not returned by you for taxation. If so, give list and description of same, by whom owned, and by whom returned for taxation.

Answer 2. The only cars, other than those owned by us upon which our initials appear, are twenty express refrigerator cars leased from the General American Car Company. The Lessor pays the taxes on those cars.

[fol. 12] Statement of Value of Rolling Stock on Hand December 31, 1937

No. Units	Description	Average One Unit	Book Value
Locomotives			
44	Passenger	\$18,170 00	\$799,479 93
91	Freight	14,793 26	1,346,186 57
59	Switch	8,063 32	475,735 89
194	Total	\$13,512 38	\$2,621,402 39
Freight Train Cars			
3962	Box	516 01	2,044,448 60
1967	Coal	540 84	1,063,835 82
202	Flat	444 18	89,723 45
221	Stock	546 01	120,668 93
94	Caboose	441 14	41,467 19
25	Coke	373 77	9,344 36
6471	Total	520 71	\$3,369,488 35
Passenger Train Cars "Wood"			
43	Coaches	1,010 75	43,462 09
10	Combination	1,218 81	12,188 13
12	Baggage	908 00	10,896 05
10	Baggage and Mail	631 72	6,317 15
75	Total Wood	971 51	\$72,863 42
Passenger Train Cars "Steel"			
3	Cafe Observation	25,894 65	77,683 96
25	Coaches	17,983 16	449,578 88
24	Baggage	13,275 31	318,607 49
5	Postal	9,050 69	45,253 44
11	Baggage and Mail	11,633 46	127,968 10
7	Combination	15,862 68	111,038 76
4	Dining	32,127 89	128,511 57
79	Total Steel	\$15,932 17	\$1,258,642 20
154	Total Passenger	\$8,646 14	\$1,331,505 62
416	Work Equipment	\$644 37	\$268,056 34

No. Units	Description	Average One Unit	Book Value
Marine Equipment			
2	Steamboats.....	\$6,769.27	\$13,538.53
2	Barges.....	5,859.53	11,719.05
4	Total.....	\$6,314.40	\$25,257.58
Miscellaneous Equipment			
3	Trucks.....	\$380.08	\$1,142.36
4	Autos.....	319.07	1,276.27
7	Total.....	\$345.52	\$2,418.63
	Grand Total.....		\$7,618,128.91

The above constitutes all the power and rolling stock which the Railway owns. On the following page, this return, we give the proper allocation for Tennessee, based on equipment mileage.

[fol. 13]

Equipment Mileage Statistics for Year 1937

	Locomotive Miles	Inc. Cab. Freight Car Miles	Passenger Car Miles	During Car Miles	Work Equip- ment Miles	Marine Equip- ment Miles
Tennessee.....	3,920,016	55,992,825	7,806,060	168,438	115,820	
Alabama.....	315,801	5,364,722	777,038	27,006	11,051	18,136
Georgia.....	1,161,676	17,289,375	3,356,978	204,550	26,334	
Kentucky.....	179,180	1,165,109	261,769	000	3,219	
Total.....	5,576,673	79,812,031	12,201,845	399,994	156,424	18,136
Total Mileage (All Classes).....				98,165,103		
Georgia.....	22,038,913=22.45%		Tennessee.....	68,003,159=69.27%		
	98,165,103			98,165,103		
Alabama.....	6,513,754= 6.64%		Kentucky.....	1,609,277= 1.64%		
	98,165,103			98,165,103		

Basis for Prorating Rolling Stock for Tennessee—See Page 000

[fol. 14]

Class "D"

Question 1.

Amount of capital stock. What dividends were paid during preceding two years.

Answer 1.

Capital stock

\$25,600,000

Dividends

None

Question 2.

Actual cash value of capital stock Jan. 10, of assessment year (Jan. 10, 1938).

Answer 2.

256,000 shares @ 14½

\$3,712,000

See following page.

Question 3.

Average cash value of capital stock during preceding year.

Answer 3.

Average 256,000 shares @ \$30

\$7,680,000

Question 4.

Amount of capital stock of each separate company or organization forming a part of your company or organization, its par and actual cash value; what dividends were paid during the preceding year, and how much of said capital stock is owned by your corporation.

Answer 4.

	Par	Book
The Tennessee Property Company	\$10,000	10,000
Sequatchie Coal & Iron Company	10,000	6,272
N. C. & St. L. Motor Transit Company	50,000	100
Bruceston Light & Power Co.	5,000	5,000

While the above capital stock of the above companies is owned by The Nashville, Chattanooga & St. Louis Railway, each company is separately assessed for taxes, credit should be given the Railway for same. No dividends were paid by any of the above companies.

Question 5.

Bonded debt of corporation; its par value and its actual cash value Jan. 10th of assessment year (January 10th, 1938).

Answer 5.

Par value	\$16,800,000
Actual cash value (70)	11,760,000
Equipment Trust Obligation	840,000

Question 6.

Bonded debt by railroad, lines, divisions and branches. Set out in full the series, order of priority, date of issuance, date of maturity, rate of interest, par and actual cash value Jan. 10th of assessment year.

Answer 6.

First mortgage 4% Gold Bonds, Series "A" covering entire system—no separation to division, branches etc.

Issued Feb. 1, 1928 maturing Feb. 1, 1978	\$16,800,000
Actual cash value (see No. 5)	11,760,000

[fol. 15]

Market Value Stocks and Bonds
From The Commercial and Financial Chronicle.

1937	Stock		Bonds	
	Shares Stock	Market Price	Bonds Par	Market Price
Jan. 1, 1937	\$256,000	40	\$16,800,000	96
Jan. 15, 1937	256,000	42-1/2	16,800,000	97-5/8
Jan. 28, 1937	256,000	38-1/2	16,800,000	97-1/8
Feb. 5, 1937	256,000	39-1/2	16,800,000	97-1/8
Feb. 25, 1937	256,000	41-1/2	16,800,000	97
Mar. 4, 1937	256,000	45	16,800,000	97-1/2
Mar. 12, 1937	256,000	46	16,800,000	96-1/2
Mar. 25, 1937	256,000	42	16,800,000	96
Apr. 2, 1937	256,000	42-1/2	16,800,000	95-3/4
Apr. 26, 1937	256,000	39	16,800,000	91-3/4
May 5, 1937	256,000	38	16,800,000	93-3/4
May 19, 1937	256,000	36-1/2	16,800,000	93-1/2
May 28, 1937	256,000	35	16,800,000	92
June 12, 1937	256,000	35-1/2	16,800,000	90
June 21, 1937	256,000	32	16,800,000	90-1/2
July 8, 1937	256,000	32	16,800,000	91
July 16, 1937	256,000	31-1/8	16,800,000	92-1/4
July 29, 1937	256,000	32	16,800,000	92-1/4
Aug. 12, 1937	256,000	32-1/4	16,800,000	92-1/2
Aug. 26, 1937	256,000	31-3/8	16,800,000	90-3/4
Sept. 1, 1937	256,000	30-1/8	16,800,000	89-1/2
Sept. 17, 1937	256,000	23	16,800,000	89
Sept. 27, 1937	256,000	20	16,800,000	87-7/8
Oct. 1, 1937	256,000	22	16,800,000	87-7/8
Oct. 14, 1937	256,000	14	16,800,000	85
Oct. 26, 1937	256,000	14-1/8	16,800,000	83-1/2
Nov. 5, 1937	256,000	14-3/4	16,800,000	83
Nov. 12, 1937	256,000	15-1/2	16,800,000	81
Nov. 24, 1937	256,000	13	16,800,000	72-3/4
Dec. 8, 1937	256,000	15	16,800,000	70
Dec. 21, 1937	256,000	13-1/2	16,800,000	70
Dec. 31, 1937	256,000	11-1/2	16,800,000	70
Stock: Jan. 1, 1937		40	Bonds: Jan. 1, 1937	
Dec. 31, 1937		11—	Dec. 31, 1937	
Average—30			Average—89-1/8	

[fol. 16] Question 7.

Bonded debt of each separate organization forming a part of your company or organization, the par and actual cash value thereof, and the amount of said bonds, owned by your organization.

Answer 7.

This is not a reorganized company. No bonds issued are owned by this company, but there are \$300,000 of First Mortgage 4% Gold Bonds, Series "A" authorized held in Treasury unsold.

Question 8.

List of securities and choses in action held or owned by your corporation on January 10th of assessment year. If no quoted or listed market value, give the average cash value for January 10th of the assessment year. Give also

income received from same during preceding calendar year.
Answer 8.

The definition of "chose in action" given by Black in his law dictionary is "A right to personal things of which the owner has not the possession, but merely a right of action for their possession." To be sure that nothing is omitted, we are filing herewith as Exhibit "A" an exact copy of the asset side of our balance sheet prepared as of December 31, 1937. The securities listed below, except in a few instances, are not quoted on the markets. We have no way of determining the actual cash value. These securities are not all in Tennessee, therefore, we are listing in two groups. First, in Tennessee, and Second, out in Tennessee. From an inspection of these lists, it is seen that many of the securities are tax exempt and should not be considered in fixing the valuation for taxes of The Nashville, Chattanooga & St. Louis Railway.

Situs in Tennessee

	Book value	Income
The Tennessee Property Co. Stock	\$10,000.00	0.00
Sequatchie Coal & Iron Co. Stock	6,272.20	0.00
N. C. & St. L. Motor Transit Co. Stock	100.00	0.00
Bruceston Light & Power Co. Stock	5,000.00	0.00
Fruit Growers Express Co. Stock	218,500.00	8672.50
Memphis Union Station Co. Stock	1.00	0.00
Merchants Exchange-St. Louis Stock	2,100.00	0.00
Memphis Cotton Exchange Stock	250.00	0.00
Memphis Cotton Exchange Pfd. Stock.	2,000.00	0.00
Tennessee Electric Power Co. Stock	800.00	48.00
Railway Express Agency Stock	400.00	0.00
	<hr/> \$245,423.20	<hr/> \$8720.50

[fol. 17]

Situs in Tennessee

	Book Value	Income
Lucy Mfg. Co. Bonds	\$968.00	00.00
Long Term Notes	27,014.76	2,794.07
Dwelling House Contracts	2,434.20	0.00
U. S. Treasury 3 1/8 % Bonds	985,830.07	31,250.00
Certificates on Deposit	1,060,000.00	21,200.00
Cash	436,145.14	0.00

	Book value	Income
U. S. Treasury $2\frac{1}{8}\%$ Notes	\$45,000.00	\$956.25
U. S. Treasury $2\frac{3}{4}\%$ Bonds	27,893.76	541.07
	<hr/> \$2,585,285.93	<hr/> \$56,741.39

Situs outside of Tennessee

	Book Value	Income
Paducah & Illinois R. R. Co. Stock	3,333.33	0.00
Paducah & Illinois R. R. Co. Bonds	131,204.50	6,120.00
U. S. Treasury $3\frac{3}{8}\%$ Bonds	380,000.00	12,825.00
U. S. Treasury $2\frac{3}{4}\%$ Bonds	219,106.25	4,251.42
Cash	415,826.66	0.00
	<hr/> \$1,149,470.74	<hr/> \$23,196.42

Question 9.

Value of Franchise. — Your corporation and the value of the franchise of each organization forming a part of your corporation as of January 10th of the assessment year, and the method by which said valuation is ascertained.

Answer 9.

The 1935 General Assembly of Tennessee enacted a law (Chapter 5, Public Acts 1935) imposing an additional tax upon all corporations. This tax is generally referred to as a Franchise Tax, but the Act does not give a formula for determining the value of Franchise. The 1937 General Assembly (Chapter 100) levied another tax in lieu of the one above referred to.

Class "E"

Question- 1, 2 and 3.

Gross receipts of the corporation for preceding calendar year, for the year 1937.

Answer- 1, 2 and 3.

Railway Operating Revenues	\$14,299,433.06
Railway Operating Expenses	12,510,171.68

Operations	1,789,261.38
Less Railway Tax Accruals	877,158.54

Railway Operating Income (see below)	\$912,102.84
Non-Operating Income (see below)	1,484,285.11

Gross Income	\$2,396,387.95
Deductions from Gross Income	2,868,010.97
Net Corporate Income—Loss	* \$471,623.02

Question 4.

Non-Operating Income by Items for preceding calendar year.

Answer 4.

Hire of Freight Cars Cr. Bal.	\$755,357.87
Rent from Locomotives	18,552.29
Rent from Passenger Cars	134,773.61
[fol. 18]	
Rent from Work Equipment	20,672.95
Joint Facility Rent Income	311,472.05
Income from Lease of Road	5,062.10
Misc. Rent Income	41,752.32
Misc. Non-Operat. Phy. Property	76,173.27
Separately Operated Properties Profit	265.62
Dividend Income	8,720.50
Income from Funded Securities	89,541.21
Income from Unfunded Securities and Accounts	21,896.92
Miscellaneous Income	44.40
Total Non-Operating Income	\$1,484,285.11

Question 5.

Deductions from Gross Income by Items for preceding calendar year.

Answer 5.

Hire of Freight Cars Dr. Bal.	\$1,010,278.57
Rent for Locomotives	8,306.93
Rent for Passenger Cars	168,990.18
Rent for Floating Equipment	1,750.00
Rent for Work Equipment	612.50
Joint Facility Rents	122,703.53
Rent for Leased Lines	806,131.89

* Red in copy.

Miscellaneous Rents	\$169.00
Miscellaneous Tax Accruals	55,622.33
Separately Operated Properties—Loss	21.03
Interest on Funded Debt	690,907.50
Interest on Unfunded Debt	2,517.51
Misc. Income Charges	0.00

Total Deductions from
Gross Income \$2,868,010.97

Questions 6, 7, 8 & 9.

Gross Receipts for Tennessee during preceding calendar year 1937.

Answers 6, 7, 8 & 9.

Railway Operating Revenues	\$10,203,795.63
Railway Operating Expenses	8,857,317.00
Net Revenue from Ry. Operations	1,346,478.63
Less Railway Tax Accruals	710,880.94

Railway Operating Income	635,597.69
Non-Operating Income	925,877.76

Gross Income	1,561,475.45
Deductions from Gross Income	1,728,259.99

Net Corporate Income * \$166,784.54

We do not apportion gross receipts to divisions or branches. Our books are kept as the Interstate Commerce Commission directs and we are not required to make such a separation of receipts. The cost of doing so would be very great. This is, however, a method of estimating the receipts by branches and divisions with substantial accuracy, which estimate can be made and furnished if the Tennessee Railroad and Public Utilities Commission desires it.

[fol. 19] Question 10.

Railway Operating Revenue for each separate line, division, branch or railroad during preceding calendar year.
Answer 10.

* Red in copy.

We do not apportion our operating revenues to divisions or branches, however, we can estimate this with substantial accuracy as above stated.

Question 11.

Railway Operating Revenue for Tennessee by each separate line, division, branch or railroad during preceding calendar year.

Answer 11.

We do not apportion Operating Revenues to divisions or branches.

[fol. 20]

Class "E"

Year 1937

Question 12.

Railway Operating Expense by items for each separate line, division, branch or railroad, during preceding calendar year.

Answer 12.

See statement below.

Expense for System

Maintenance of Way & Structures	\$1,800,821.53
Maintenance of Equipment	3,481,509.46
Traffic	769,944.66
Transportation	5,732,387.12
Miscellaneous Operations	95,556.20
General	640,036.40
Transportation for Investment Cr.	10,083.69

Total	\$12,510,171.68
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Question 13.

Railway Operating Expense for Tennessee by items for each separate line, division, branch or railroad during preceding calendar year.

Answer 13.

See statement below.

Expenses for Tennessee

	System
Maintenance of Way & Structure	\$1,344,160.63
Maintenance of Equipment	2,405,365.40
Traffic	552,185.63

	System
Transportation	\$4,071,448.23
Miscellaneous Operations	49,825.21
General	441,565.94
Transportation for Investment Cr.	7,234.04
Total	<hr/> \$8,857,317.00

Note: Expenses are not maintained by Divisions.

[fol. 21] Question 14.

Non-Operating Income by items for each separate line, division, branch or railroad, during preceding calendar year.

Answer 14.

Items of Non-Operating Income for system are shown in answer to Question E-4.

Question 15.

Non-Operating Income for Tennessee by items for preceding calendar year.

Answer 15.

	Tennessee
Hire of Freight Cars Cr. Bal.	\$527,693.22
Rent from Locomotives	12,789.95
Rent from Passenger cars	66,982.50
Rent from Work Equipment	14,905.20
Joint Facility Rent Income	83,353.77
Income from lease of Road	3,296.02
Miscellaneous Rent Income	22,753.27
Misc. Non-Operating Physical Property	73,635.38
Dividend Income	8,720.50
Income from Funded Securities	89,541.21
Income from Unfunded Securities & Accts.	21,896.92
Miscellaneous Income	44.40
Separately Operated Properties—Profit	265.62
	<hr/> \$925,877.76

We do not apportion non-operating income to branches or divisions.

Question 16.

Non-Operating Expense by items for each separate line, division, branch or railroad during preceding calendar year.

• Red in copy.

Answer 16.

Items of Non-Operating Expenses for the system are shown in answer to Question E-5. We do not apportion such expense to divisions or branches.

Question 17.

Non-Operating Expense for Tennessee by items for preceding year.

Answer 17.

Deductions from Gross Income	Tennessee
Hire of freight car Dr. Bal.	\$705,780.62
Rent for Locomotives	5,726.79
Rent for passenger cars	33,988.11
Rent for Work Equipment	450.98
Joint Facility Rents	112,819.48
Rent for Leased Lines	233,902.87
Miscellaneous Rents	125.00
Miscellaneous Tax Accruals	53,997.64
Separately operated properties—Loss	21.03
Interest on Funded Debt	529,649.71
Interest on Unfunded Debt	1,797.76
	<hr/>
	\$1,728,259.99

Question 18.

Attach a full and complete copy of the formulas. Used [fol.22] in segregating and allocating receipts, revenues, expenses and income, in your answers to 6-15 inclusive.

Answer 18.

Attached hereto marked Exhibit "B" is Accounting Department circular No. 372 of January 30, 1935.

Question 19.

Attach a copy of your annual report to stockholders for preceding calendar year.

Answer 19.

This report will not be off the press until after the stockholders meeting in April. Copy will be promptly filed.

Class "B"

Questions 1 and 3 relate to localized property situated outside of the State of Tennessee.

Answer to 1 and 3.

	Georgia	Alabama	Kentucky
Tracks	\$4,814,112	\$2,313,533	\$639,900
Rolling Stock	872,417	286,770	277,760
Engine Houses & Shops	22,750	4,000	4,040
River Equipment	000	33,333	300
Depots	356,900	31,380	21,900
Land and all other property	1,970,572	146,316	75,640
Total	\$8,047,051	\$2,815,332	\$1,019,330
Grand Total	\$11,881,713		

In answering the above questions 1 and 3, we have returned the properties in Kentucky at assessed valuation, which is based on 100% cash value. In Alabama, the assessment has been raised from 60 to 100% in order to get an equal comparison. In Georgia, the N. C. & St. L. Ry.'s property has been included at full assessed value and to this has been added the W. & A. Railroad, which is tax free in that State. This has been included at same rate per mile as assessed in Tennessee. The question does not call for the distributable property, but it has been included as a matter of information.

[fol. 23] Question 2.

File a schedule as to property of above designated character owned by said company or in which said company had an interest, in the State of Tennessee on said date.

Answer 2.

The following pages 24 to 74 are a list of such property arranged by divisions and branches and subdivided by counties and towns. For school districts, see pages 83 to 97.

The rate per mile for distributable property includes, among other things, telephone and signal wires together with a fair proportion of the value of rolling stock.

[fol. 24]

Class "F"

Chattanooga Division

Distributable Property in Tennessee

124 87 miles main line @ \$30,000					\$3,746,100
133 43 miles side line @ 1,500					200,145
Total					\$3,946,245
Counties	Main Line	Value	Side Line	Value	Total Value
Davidson	14 99	\$449,700	16 03	\$24,045	\$473,745
Rutherford	32 63	978,900	11 97	17,955	996,855
Bedford	16 91	507,300	6 25	9,375	516,675
Coffee	6 36	190,800	7 43	11,145	201,945
Franklin	31 76	952,800	20 92	31,380	984,180
Marion	12 79	383,700	17 44	26,160	409,860
Hamilton	9 43	282,900	53 39	80,085	362,985
Total	124 87	3,746,100	133 43	200,145	3,946,245

Corporations

Nashville.....	2.28	68,400	5.86	8,775	77,175
Smyrna.....	0.60	18,000	1.32	1,980	19,980
Murfreesboro.....	1.50	45,000	4.75	7,125	52,125
Bell Buckle.....	0.55	16,500	1.75	2,625	19,125
Wartrace.....	0.91	28,100	2.10	3,150	31,250
Normandy.....	0.60	18,000	0.90	1,350	19,350
Tullahoma.....	1.56	46,800	5.58	8,370	55,175
Decherd.....	0.69	20,700	2.51	3,765	24,365
Cowan.....	0.70	21,000	2.19	3,285	24,285
Chattanooga.....	2.50	75,000	45.41	68,115	143,115
Estill Spg. SSD.....	1.58				
Decherd SSD.....	4.95				

[fol. 25]

CHATTANOOGA DIVISION

LOCALIZED PROPERTY IN TENNESSEE

Davidson County

Nashville Corporation—

7th Ward:

Lot fronting 70 ft. on Broadway—depth 120 ft.	\$40,000
Office building, 930 Broadway, on above	100,000
Lot in rear fronting 93 ft. on 10th Ave. No. running back eastwardly 111 ft. to Blackwoods	8,000
Next lot facing 116 ft. on 10th Ave. No. running back eastwardly 227 ft. to Geo. Cole warehouse	9,000
Engineers, Comptroller's Bldg. and garage on above two lots	30,000
Office and storeroom for dining car service under Broad St. viaduct	500
Lot fronting 100 ft. on Broad St. and 110 ft. on west side 10th Ave. No. leased in part to Pan-Am. Pet. Corp.	40,000

9th Ward:

4.91 acres between Cedar, Walnut, Church & McCreary Sts. not covered with tracks	30,000
Freight depot on Walnut, between Church & Cedar Sts. partly on right of way	40,000
Freight depot south of Church St.	30,000

11th Ward:

Triangle 50' x 52' on alley between Allison & Wetmore Streets, outside right of way 70

13th Ward:

Triangle 45' x 45' corner Ewing Ave. and Ellison Sts. outside right of way 50

15th Ward:

1 crossing gate tower—Fogg Street 20

Signal tower on right of way at N. & D. Jet. 300

Part lot Humphreys, Houston & Martin's Add. (0.02 acres) vacant 25

Irregular lot between right of way and west side Cherry St. 0.99 acres leased to Ralston Purina Co. 2,500

Irregular lot south side Tutweiler Ave. between College St. and right of way 0.39 acres 200

2 section houses 400

1 signal tower on right of way near Cherry St. crossing 100

Triangle on Ensley Blvd. (0.21 acres) 75

Part Enoch Ensley property lying between right of way and Browns Creek corp. line and a line 160 ft. east of Ensley Blvd. (3.43 acres) 500

Triangle lying both sides Tenn. Central RR. bounded north by St. east by corp. line, south by Ry.—1.75 acres 250 \$331,990

6th District:

Part Ensley property lying bet. corporation line, Browns Creek, wagon road and a line 150 ft. east of Ensley Blvd. (2.51 acres) 400

Triangle bet. intersection of rights of way of Chatta. Div. & Lebanon Br. [fol. 26] 0.08 acres \$10

64.30 acres right of way extending from Nolensville pk. to a point near Danley Sta. purchased for future use to

connect main line with Radnor Yd.	3,215	
$\frac{1}{4}$ acre triangle main line and Lewisburg & Northern crossing	25	
5.6 acres bounded west by corp. line, north by street, south by Ry.	1,100	\$4,750

Easton:

2 acres depot grounds south side Ry.	400	400
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Glencliff:

1 telegraph office	100	100
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Danley:

Triangle at intersection of R/W and Asylum Road 0 0.41 acres	50	
2 telephone booths	10	60

Minums:

1 telephone booth	5	5
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Antioch:

Section house lot at intersection of R/W and public road, 2.57 acres	150	
4 section houses	1,000	
1 tool house	25	
Triangle containing 0.65 acres adjacent to R W back of depot	250	
1 depot	500	
1 septic closet	5	
2 telephone booths	10	1,940

Total Davidson County \$339,245

Rutherford County

LaVerne:

Triangle south side Murfreesboro pk. and pass. depot—0.22 acres	25	
Lot 150' x 200' at intersection of south R/W line and south margin of Mur- freesboro Pike	75	

Irregular lot north side Ry. near Murfreesboro pk. 0.75 Ac.	75	
Section house lot south side Ry. north side Murfreesboro pk. 1.65 acres	175	
1 depot	700	
4 section houses	1,000	
1 fool house	25	
1 water tank & pumping station	300	
5.8 acres land at pump station	300	
1 telephone booth	5	2,680

[fol. 27] Near Smyrna:

Section house lot south side Ry. 1.17 acres	\$60	
4 section houses	1,000	
1 fool house	25	\$1,085

Smyrna Corporation:

Part depot grounds south side Ry. 1.72 acres	100	
Part depot grounds north side Ry. 1.48 acres	60	
1 depot (small brick 25' x 70')	700	
1 stock pen	25	
Pt. lots 2, 6 & 7 north side Ry. 0.29 acres	200	
1 oil house	5	
2 telephone booths	10	1,100

Florence:

1 passenger shelter 8' x 12' and 2 telephone booths	30	30
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Mile 26:

0.67 acres on Overall Creek	10	10
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Stones River:

1 pump station on R/W	500	500
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Murfreesboro Corporation:

Triangle lying east side Ry. south side Main St. 0.66 acres	150	
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Triangle containing 6.56 acres bounded
N. by rear of lots facing Main St., E.
by Lytle Creek, W. by RR.

650

Irregular lot bounded west by Ry., east
by Walnut St. north by Castle St. 4.47
acres

450

Freight depot

1,500

Passenger depot & baggage room

4,000

4 section houses

800

1 water tank

500

2 tool houses

50

1 oil house

15

1 stock pen

40

1 car body office (track supervisor)

10

3 telephone booths

15

8,180

Winsted:

2 telephone booths

10

10

Rucker:

Section house grounds east side Ry. 1

acre

60

1 depot 20' x 24'

100

3 section houses

600

1 tool house

25

1 telephone booth

5

790

Christiana:

Depot grounds north side Ry. 1.18 acres

200

1 depot 25' x 65'

400

1 stock pen

25

2 telephone booths

10

635

[fol. 28] Fosterville:

Part depot grounds and section house
lots east side Ry. 2.54 acres

\$200

1.37 acres pt. depot grounds west side Ry.

100

1 depot 24' x 74'

500

3 section houses

600

1 tool house

25

1 stock pen

15

1 house & lot purchased of Lewis in 1924	600	
2 telephone booths	10	\$2,050

Total Rutherford County \$17,070

Bedford County

Bell Buckle Corp.:

Part depot grounds & section house lot east side Railway 2.6 acres	600	
Part depot grounds south side Ry. 1.6 acres	160	
1 freight depot	700	
1 passenger depot	750	
1 tool house	25	
4 section houses	800	
1 stock pen	25	
1 telephone booth inside City	5	3,065

Near Bell Buckle:

2 telephone booths	10	10
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Wartrace Corporation:

Part depot grounds east side Ry. 1.79 acres	500	
Part depot grounds south side Ry. 1.6 acres	500	
1 freight depot	800	
1 passenger depot	1,000	
1 pumpers house	100	
1 coal house	20	
2 water tanks	200	
0.1 acres on Creek (old water supply)	5	
1 stock pen	25	3,030

Near Wartrace:

2 telephone booths	10	10
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Haley:

Section house lot east side Ry. 1.30 acres	75	
1 depot 20' x 50'	200	
4 section houses	800	

1 tool house	25	
1 stock pen	15	
2 telephone booths	10	1,125
		<hr/>

Cortner:

1 depot and 0.08 acres	400	
1 stock pen	10	410
		<hr/>

Normandy Corporation:

Depot grounds east side Ry. 1.11 acres ..	100	
1 depot	600	
1 stock pen	15	
1 telephone booth	5	720
		<hr/>

Total for Bedford County, \$8,370

[fol. 29] Coffee County

Mile Post 65:

1 water tank	\$100	100
		<hr/>

Mile Post 66:

161 acres on Norman Creek, west side Ry.	1,100	
3 section houses	600	
1 tool house	25	
1 oil house	5	1,730
		<hr/>

Mile Post 68:

17 acres west side Ry. between Tullahoma Corp. line & property sold J. W. Harton lying west of Campbell Spur	200	
5 1/2 acres lying west of main line & east of Campbell Spur	100	
0.55 acres at Gunn Springs including Big Spring leased to City of Tullahoma free of charge	10	310
		<hr/>

Tullahoma Corporation:

1 acre north side Atlantic St. between Volney and Carroll Sts.	600	
1 freight depot and transfer platform	1,000	
1 passenger depot and baggage room	1,000	

3 section houses	600	
2 tool houses	40	
1 office bldg. lots 14, 15 & 16 Sec. 9— 160 x 200	4,000	
1 stock pen	20	
1 water tank	200	
1 telephone booth	5	
1 pump house	50	
10 old car bodies	50	7,565

Near Tullahoma:

4 laborers houses and 1 tool house	800	
18 acres land extending from corp. line to County line, leased to J. W. Harton	180	
465 acres barren land in 13th Dist. bounded north by Jobling & Tenn. Prop. Co. east by Worden, south by County line, west by demonstration farm, leased to State of Tenn. for mili- tary camp	930	
40 acre tract bounded west by Sam Hughes, south by Ernest Hughes, east by Z. B. Beechboard	80	
40 acres residue of deGraauw farm 14th Dist. bounded S. by Sam Hughes, N. E. & W. by Tenn. Prop. Co.	80	
80 acres dwelling & barn formerly owned by deGraauw	500	2,570
Total for Coffee County		\$12,275

Franklin County

Elsie:

71 acres land adjoining State property west side of tracks	200	200
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Mile Post 71-74:

372 acres Decherd land-east side tracks— leased to State for military camp	1,200	
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[fol. 30] Mile Post 71-74:

172 acres "Armstrong" land—east side tracks	\$350	
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1077 acres "Huggins" land—both side tracks	1 2,000	\$3,550
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Estill Springs:

Part depot grounds east of Ry. 1.38 acres	50	
Part depot grounds west of Ry. 1.38 acres	50	
1 depot, frame	400	
1 stock pen	15	
0.77 acres additional right of way at Creek purchased of Board and Carney	30	
Leased Rail (Estill Spgs. Sand & Gravel Co.)	330	
3 small parcels at Elk River Bridge east side main line 0.8 acres	40	
2 telephone booths	10	925

Decherd Corporation:

Depot grounds & section-house lot east side Ry. bet. depot, Front & Chestnut Sts. 4.79 acres (not including streets)	1,000	
1 freight depot	1,500	
1 passenger depot, frame	800	
1 baggage room	100	
2 tool houses	50	
4 section houses	1,200	
1 water tank	100	
1 pumping station	200	
1 stock pen	15	
0.67 acres purchased of Heikens, north side Ry. west of Chestnut St.	150	
1.61 acres Blk. 10 purchased of Murray, south side Ry.	250	
0.95 acres part Blk. 16, purchased of Ramsey south side Ry.	1,000	
0.55 acres on Wagner Creek, north side Ry.	20	
2 telephone booths	10	
2 watchman shanties	20	
1 car body for repair	40	6,455

Near Cowan:

2 telephone booths	10
1 coal house	25

1 yard office	25	
0.43 acres north side Ry. at tank	40	
1 water tank	1,000	
1 coal chute and sandhouse	5,000	
1 engine shed and pit	270	
1 small house, shavings	15	
3.18 acres inside wye (not covered with trks.)	160	
3 oil houses	30	
1 pumping station	200	
1 coal chute office	5	
1 roadway office	5	
0.40 acres east side Boiling Fork Creek	40	6,825

Cowan Corporation:

1 tool house	25	
1 stock pen	40	
20.82 acres bounded east by J. R. Barnes, north by J. R. Barnes, west by Wagon Road, south by RR	2,000	
[fol. 31]. Part depot grounds north side Ry. 1.2 acres	\$800	
Part depot grounds & section house lot south side Railway 1.56 acres	400	
1.5 acres South side Ry. west side Boiling Fork Crk.	150	
1 passenger depot, frame	1,500	
1 freight depot, frame	1,200	
1 section houses	1,500	\$7,115

Tunnel:

38.6 acres both sides Chattanooga & Tracy City Branches at north end of tunnel	100	
1 watchman's dwelling	100	200

Rockledge:

1 signal tower	100	
02.9 acres north side Ry.	90	
1 telephone booth	5	195

Mile Post 92:

1.38 acres south side Ry. north end canal	5	5
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Tantallon:

Section house grounds east side Ry. 0.64 acres	15	
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4 section houses	1,200	
1 tool house	25	
1 old house and 50 acres land	200	
1 telephone booth	5	1,445

Sherwood:

1 interlocker tower	40	
2.84 acres west side Ry.	75	
1 depot, frame	500	
1 water tank	100	
1 pumping station	200	
1 stock pen	10	
1 oil house	5	
1 closet	10	
2 telephone booths	10	950

Anderson:

8.5 acres section house lot	100	
1 depot	500	
3 section houses	600	
1 tool house	25	
0.32 acres additional right of way between Crow Creek and Railway	25	
1 stock pen	15	
1 telephone booth	5	1,270

Total for Franklin County	\$29,135
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Marion County

Mile Post 128:

Additional right of way 1.25 acres	40	40
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[fol. 32] Shellmound:

2.01 acres between wye tracks	\$80
0.8 acres on river front	30

20 acres between railroad and river, south of Cove Creek	400	
1 depot, frame	500	
1 pumpers house	500	
3 water tanks	300	
1 pumping station	400	
1 stock pen	25	
1 box and batton house at Dry Creek	50	\$2,285

Ladds:

1 acre depot grounds	20	
1 depot	300	320

Vulcan:

5 section houses & 0.63 acres land	2,000	
1 tool house	25	2,025

Running Water:

1 lot	20	
3 acres purchased of Dagnon in Aug. 1920	120	140

Whiteside:

0.44 acres back of depot	25	
Section house lot south side Ry. 0.32 acres	20	
4 section houses	1,200	
1 tool house	20	
1 depot, frame	400	
1 closet	10	1,675

Mile Post 138:

1 water tank, gravity feed	50	50
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Summit:

3.87 acres	50	50
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Total for Marion County

\$6,585

Hamilton County

Summit:

30 acres of mountain land	100	100
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Hooker:

2 section houses	600	
0.7 acres west side railroad	30	
0.77 acres east side railroad	50	
2 tool houses	50	730

Lookout:

4.33 acres south side Ry.	200	
3 section houses	900	
1 tool house	25	1,125

Near Chattanooga:

N. Y. Tower	500	500
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[fol. 33]

Hamilton County

Chattanooga—

Cravens Yard:

Right of way purchased for new line to Alton Park—Woodburn—9.68 acres	\$970	
Watchman shanty	10	
North end Car Inspector's house 12 x 12 frame	25	
Track scales	1,500	
Main line cinder pit tender's house 8 x 10	10	
Section tool house (car body)	25	
Signal maintainer's house (car body)	25	
Automobile garages	500	
South end Car Inspector's house (car body)	25	
Coal house—Blacksmith shop	25	
Waste reclaiming house (car body)	25	
Ice house (car body)	25	
Water tank & Pumping station	2,500	
Oil house 20 x 30	100	
Coaling station	5,000	
Master Mechanic's office bldg. & store- room (stucco 30 x 100 inc. furniture & fixtures)	5,000	
Electric meter room 6 x 8 frame	10	
Yard office 30 x 60 (frame)	2,000	
Pipe rock shed 18 x 20	50	

Machine shop and roundhouse	20,000
Machinery & tools etc.	3,000
Wash & bath house 20 x 30 brick	600
Boiler room & Washout plant 30 x 30 C. I. Bldg.	500
Switchman's house 18 x 24 frame	100
Compressor room 15 x 20 frame	100
Water closet 12 x 12 brick	100
Punch shed 20 x 30 frame	50
Blacksmith shop & Wood working mill 60 x 160 frame	500
Old coach body (used as class room)	25
Lumber shed 40 x 100	600
Fire hose reel house 12 x 24 frame	50
22.1 acres south side Ry. between N. C. & St. L. Ry. & Chattanooga Creek not covered with tracks	2,210
9.9 acres between Railway, N. Y. Tower bridge, Tenn. River & U. S. Cast Iron Pipe & Fdry. Co. not covered with tracks	1,980

End Cravens

Lewis St. Tower—brick	800
3 section houses near 20th St.	800
1-tool house near 20th St.	25
Triangular lot corner Chestnut & Carter Sts. running back to private alley leased to Ry. Express Agency	20,000
Lot back of Ry. Exp. Agency office facing 31' on Carter St. running back to Chest- nut, used for private driveway	2,000
No. 1012 Carter St. lot facing 100 ft. on east side of St. running back 80 ft. to railroad	7,000
One-story brick warehouse on above 1018 Carter St. facing 39' on east side St. leased to R. C. Jones	1,500
1024 Carter St. lot facing 39' on east side St. leased to R. C. Jones	2,700
1028-1030 Carter St. lot facing 50' on east side St. running back 88 ft. to railroad	2,700
	3,000

[fol. 34] Old 1-story brick warehouse on above	\$1,000
1032-1034 Carter St. lot facing 111 ft. on east side St. running back 96 ft. to railroad	8,000
Old 1-story brick bldg. on above	2,000
Irreg. lot fronting 86' on (Nos. 105-107) West 11th St. running back 75 ft. along RR. track	2,000
Building on above	5,000
1023-1031 Chestnut St. lot facing 100 ft. on west side St. running back to railroad	8,000
2-story brick warehouse on above	8,000
Lot facing 27½' west side Chestnut St. running back with private alley	2,200
2-story brick warehouse on above	4,000
Irregular lot facing 266' 6" west side Chestnut St. running back 71 ft. with private driveway to RR.	22,000
Warehouse on above	20,000
Private driveway south of above	2,000
Lot facing 50' west side Chestnut St. No. 1001—running back with private alley to RR.	4,000
Building on above	3,000
Lot facing 220' west side Broad St. and south of wye track	15,000
Building on above	8,000
Water tank	200
1 brick locker house near Broad St. Xing	500
Lot leased to Ry. Express Agcy. fronting 75' on west side Broad St. just north Shelton Mills 12,500 sq. ft.	6,000
1 small office for team track clerk—Chestnut St.	20
Triangular shaped lot fronting 220' east side Chestnut St. leased to Burkhart-Schier Chemical Co.	12,000
Lot fronting 186 ft. south side 9th St. running back with Chestnut St. 150' occupied by pass. & frt. depots	93,000
Passenger depot including sheds and platforms	25,000

Freight depot	20,000
Lot 28 x 325 east side Chestnut St. beginning 150 ft. south of 9th St.	16,250

Total Chattanooga \$385,335

Total for Hamilton County \$387,790

Grand total—Chattanooga Division Tennessee \$800,470

[fol. 35] Western & Atlantic Railroad

Distributable Property in Tennessee

15.45 miles main line @ \$30,000	\$463,500
5.21 miles side line @ 1,500	7,815

Total \$471,315

County	Main Line	Value	Side Line	Value	Total Value
Hamilton	15.45	\$463,000	5.21	\$7,815	\$471,315
Chattanooga Corporation:					
Chattanooga	5.57	157,100	4.15	6,225	173,325

Localized Property in Tennessee

Hamilton County

Chattanooga Corporation:

Lot S. W. corner 9th & Broad—fronts 49' 7" on 9th runs back 124' on Broad—average depth on Broad 50 ft.	\$25,000
Lot S. E. corner 9th & Broad—fronts 76 ft. on Broad—depth along 9th St. 80 ft.	48,000
Old stores on above lot	8,000
Lot fronting 40' on south side 9th St. depth 76 ft. middle of block	24,000
Old stores on above lot	4,000
Lot S. W. corner Market & 9th Sts. fronts 76 ft. on Market—depth along 9th St. 80 ft.	64,000
Building and stores on above lot	16,000
Lot fronting 60' on west side Market St. running back 200 ft. on Broad St.	48,000
Storehouse on above lot	30,000
Lot fronting 161' on Market St. running through to Broad St. with the north line of 10th St. 200 ft.	90,000
Old stores on above	8,000

Lot 75' x 150' S. W. corner 10th and Market St.	35,000
Bus depot on above	15,000
Lot 50' x 75' corner 10th & Broad leased to Gulf Refining Co.	7,500
Lot 198' x 200' bounded north by Bus depot, south by 11th St.	90,000
Old stores on above	2,000
Lot southeast corner Broad & 11th Sts. 70' x 135' leased to Johnson Tire Company	10,000
Buildings on above lot	7,500
Lot fronting 195' on west side Market St. with depth of 50 ft. S. W. corner 11th and Market Streets	36,000
Old brick buildings on above	4,000
Two-story brick building on above	3,000
Lot leased to J. B. Pound containing 1,050 sq. ft. in rear of 1127 Market St.	600
Auto platform between Market and Broad Sts.	1,000
Unloading crane on east side Broad St. below auto platform	200

Citico—New 12th Ward—Chattanooga:

Section house lot east side Railway 2.7 acres	270
[lots 36-76] 4 section houses	\$800
1 tool house	30
Leased rail (Sou. Wood Preserving Co.)	1,420

Boyce—New 12th Ward:

0.5 acres	50
1 oil house	10

Total—Chattanooga Corporation \$588,380

Chickamauga:

Depot lot north side Railway 3 acres	60
1 depot	500
	<u>560</u>

Whorley:

Section house lot 3.8 acres south side Ry.	150
2 section houses	600

1 tool house	30
1 small freight shelter	50
	830
Total Hamilton County	\$589,770
Total W. & A. Division	\$589,770

(Pages 37-76, inclusive continue the listing and valuation of items of localized property by counties and distributable property by divisions and branch, as on pages 24-36.)

[fol. 77] Question 3. As to such property schedules and being outside of Tennessee, give the values at which same was assessed for taxation in any other State or States in the last general assessment of same in such State or States. If any part of the property scheduled was not subject to taxation or not assessed for taxation in such other State or States on the 10th day of January of the assessment year, then designate same at cash values on said date, with location and general description of same. If such assessments in another State or States are deemed excessive, then state such values as you deem to be fair.

Answer 3. See answer to Question F-1 for values referred to.

Question 4. File a separate schedule of all property real, personal or mixed-owned by your company on January 10th of the assessment year, and not used by it in the service of transportation. Give its location; its book value; its actual cash value. If leased or rented, give name of lessor or rentor, the nature and substance of lease or contract, and the amount of compensation received therefor during the preceding calendar year.

Answer 4. This class of property consists of rail and track fastenings leased to divers parties and certain real estate. The Nashville, Chattanooga & St. Louis Railway is the lessor in every instance. The rail is leased to industries and included in localized property return in answer to Question F-2, as is the real estate.

In addition to the rail, joints and fastenings leased to industries, we have 981 leases on property not used in operation, including the retail rental property at Chattanooga.

With the exception of the Chattanooga retail stores, the leases are mainly for warehouse sites, coal yards, platforms, scales sites, and the cultivation of vacant areas.

The return from this property, separated by States, is as follows:

Tennessee	\$131,726.94
Georgia	21,834.67
Alabama	3,764.34
Kentucky	4,072.60
Total	\$161,398.55

NOTE: If it is desired, we will furnish detailed description of the rental property.

[fol. 78]

Class "H"

Question 1. Of cost per mile of construction of road? Of cost per mile of equipment? Total cost per mile of both? If purchased, give cost and date of purchase? If leased give amount and nature of rental?

Answer 1. We do not know the cost per mile of the construction of our road.

As to equipment, our books shew a value of \$7,618,128.91 which divided by the operating mileage of 1115.35 gives \$6,830.25 per mile.

A large part of our mileage was purchased. See answer to 5-A. The Western & Atlantic Railroad is leased from the State of Georgia. We pay \$45,000 per month and credit annually to an Addition and Betterment Account, a sum that will average not less than \$5,000 per month. The Paducah & Memphis Division is leased from the L. & N. Railroad Company in consideration of an annual rental equivalent to 5% upon the purchase price plus money furnished by the owner for improvements.

Question 2. Book value of the corporate property: Give the book value of the road as a whole and separately as to each branch, division, line or railroad forming a part of your system. Give book value of rolling stock in like manner.

Answer 2. The asset side of the balance sheet gives the figures called for. We cannot accurately separate this by branches. See answer to H-1 for rolling stock.

Question 3. File a statement showing the total value of your property as shown by the tentative valuation sub-

mitted by the Interstate Commerce Commission separated as to valuation sections.

Answer 3. The tentative valuation report referred to was mailed to us on July 8, 1924. On page 14 of same is the figure of \$69,262,132 as the final value of all property used by the NC&STLRY. There was no separation between Valuation Sections.

[fol. 79] Question 4. File a statement showing the total land value of your property (as shown by the tentative valuation submitted by the Interstate Commerce Commission separated as to valuation sections.

Answer 4. Said tentative valuation report shown on page 9, the value of all land used in operation valued at \$15,727,350. There is a distribution by States but none by valuation sections. The preliminary Land Report, as revised from time to time, shows the distribution by valuation sections, as follows:

Section	Amount
1	\$1,252,784
2	411,050
3	491
4	94,591
5	585,366
5-A	847,710
6	375,771
8	1,460
8-A	2,966
9	118,243
9-A	1,215
10	19,740
11	115,256
12	21,293
13	8,720
14	2,064
15	244,277
16	68,687
17	43,598
18	91,907
19	26,047
20	184,260
21	131,920
22	10,556
23	27,973

Section	Amount
24	\$58,744
25	234
1 W & A	7,259,890
2 W & A	656,873
3 W & A	61,570
4 W & A	2,022,157
1 P & M	53,053
2 P & M	54,116
3 P & M	222,455
4 P & M	601,630
5 P & M	16,880

[fol. 80] Question 5. File a statement showing the total valuation of your property as shown by the Engineering Report of the tentative valuation submitted by the Interstate Commerce Commission separated as to Valuation Sections.

Answer 5. The Engineering Report shows \$49,918,143. This is divided by valuation sections as follows:

Valuation Section	Amount
1	\$1,063,623
2	5,505,909
5	2,119,651
6	4,903,784
9	809,170
10	923,941
11	1,372,475
12	264,111
14	30,705
16	1,914,349
17	160,436
18	659,756
19	1,111,215
22	17,460
24	113,438
25	2,393
3	218,948
20	289,364
21	493,648
4	1,225,509
8	64,241
8-A	73,910
13	149,810

Valuation Section	Amount
15	\$1,561,481
7	204,710
23	25,708
23-A	38,804
Not Allocated, page 631	
Equipment	8,572,039
5-A	1,031,713
W & A 1	804,967
W & A 2	4,271,133
W & A 3	519,445
W & A 4	139,704
P & M 1	182,914
P & M 2	643,410
P & M 3	3,529,970
P & M 4	490,608
P & M 5	441,106
9-A	25,930
Overheads	3,948,655

[fol. 81] Question H-6, A Map showing the valuation sections.

Answer H-6. Index map for Bureau of Valuation has been filed.

Question H-7. Date of tentative valuation.

Answer H-7. June 30, 1916.

Question H-8. File a statement showing total Additions and Betterments made subsequent to valuation date, as per returns made under Valuation Order No. 3, subdivided as to valuation sections up to January 10th. of assessment year.

Answer H-8. The following is a statement showing total Additions & Betterments (exclusive of equipment) from June 30th 1916 to December 31, 1937 by valuation sections.

Valuation Section	Amount
1 Tenn.	\$827,245.00
2 Tenn.	2,209,755.66
3 Ga.	54,516.22
4 Ala.	648,180.54
5 Tenn.	1,173,930.62
5-A Tenn.	42,603.82
6 Tenn.	2,282,642.82
7 Ky.	*17,804.63

* Red in copy.

[fols. 82-99] Valuation Section Amount

8	Ala.	\$6,901.08
8-A	Ala.	118,723.14
9	Tenn.	138,862.61
9-A	Tenn.	*1,748.90
10	Tenn.	390,301.56
11	Tenn.	167,467.15
12	Tenn.	*363,533.00
13	Ala.	*204,272.00
14	Tenn.	2,967.39
15	Ala.	303,143.50
16	Tenn.	*368,081.92
17	Tenn.	43,031.43
18	Tenn.	*981,499.26
19	Tenn.	11,835.07
20	Tenn.	44,080.90
21	Ga.	414,042.51
22	Tenn.	*3,630.09
23	Ky.	281,306.67
23-A	Ky.	*61,971.00
24	Tenn.	8,232.13
25	Tenn.	*4,387.30
Roadway Machines		125,150.97
1- W & A	Ga.	805,106.86
2- W & A	Ga.	2,106,955.27
3- W & A	Tenn.	248,539.93
4- W & A	Tenn.	43,102.37
1- P & M	Ky.	61,866.66
2- P & M	Ky.	336,789.45
3- P & M	Tenn.	1,312,599.78
4- P & M	Tenn.	230,823.05
5- P & M	Tenn.	*593,175.17

Class "I"

Question 1. Answer fully all questions set out in enclosed blank pertaining to privately owned cars handled over your system during preceding calendar year. Let this answer be forwarded to the Commissioner on or before February 1st of assessment year.

Answer 1. This information was forwarded to your Commission on March 2nd 1938.

(Pages 83 to 97 inclusive list and value items of localized property by special taxing districts.)

* Red in copy.

(Here follows one photolithograph, side folio 99)

The Nashville, Chattanooga & St. Louis Railway

GENERAL BALANCE SHEET AT THE CLOSE OF

DECEMBER 1937.

Exhibit "A"

ASSETS		I. C. C. Account No.			LIABILITIES	I. C. C. Account No.		
INVESTMENT:					STOCK:			
Road	701—	32,754,936.01			Capital Stock	751	25,600,000.00	
Equipment	701—	17,982,516.47			Premium on Capital Stock	753	10,480.14	25,610,480.14
Investment in Leased Railway Property	702	5,860,140.75	50,737,452.48		FUNDED DEBT:			
TOTAL INVESTMENT—TRANSPORTATION PROPERTY			56,597,593.23		Grants in Aid Construction	754		30,925.22
Sinking Funds	703		9,110.22		Long Term Bt. Unmatured (Outstanding)	755	17,940,000.00	
Deposits in Lieu of Mortgage Property Sold	704		565,897.07		Long Term Bt. Unmatured (Held in Treasury)		300,000.00	17,640,000.00
Miscellaneous Physical Property	705		243,606.53		CURRENT LIABILITIES:			
Investments in Affiliated Companies	706		131,204.56		Loans and Bill Payable	758		
(a) Stocks			1,531,673.69		Traffic and Car Service Balances Payable	759	240,763.42	
(b) Bonds			5,150.00		Audited Accounts and Wages Payable	760	795,116.24	
(c) Notes			1,658,798.08		Miscellaneous accounts Payable	761	102,273.76	
(d) Advances			27,014.76		Interest Matruel, Unpaid	762	1,980.00	
Other Investments	707		2,434.20		Dividends Matruel, Unpaid	763	1,000.00	
(a) Stocks			4,174,889.05		Funded Debt, Matured, Unpaid	764		
(b) Bonds			60,772,482.28		Unmatured Dividends Declared	765	286,300.00	
(c) Notes					Unmatured Interest Accrued	766	25,777.85	1,453,211.27
(d) Advances					Other Current Liabilities	768		
(e) Miscellaneous					DEFERRED LIABILITIES:			
TOTAL INVESTMENT—(ACCOUNTS 703-707, Inc.)					Other Deferred Liabilities	770		211,877.71
GRAND TOTAL—INVESTMENTS					UNADJUSTED CREDITS:			
CURRENT ASSETS:					Tax Liability (Accrued Taxes)	771	503,070.12	
Cash	708	851,971.80			Premium on Funded Debt	772		
Demand Loans and Deposits	709				Maintenance Reserves	774		
Time Drafts and Deposits	710	1,060,000.00			Accrued Depreciation, Road	775		
Special Deposits	711	59,511.33			Accrued Depreciation, Equipment	776	10,364,387.56	
Loans and Bills Receivable	712	2,304.29			Accrued Depreciation, Mis. Physical Property	777	28,228.23	
Traffic and Car Service Balances Receivable	713	190,209.75			Other Unadjusted Credits	778	1,698,256.63	12,593,942.54
Net Balances Rec. from Agents and Conductors	714	105,081.15			CORPORATE SURPLUS:			
Miscellaneous Accounts Receivable	715	662,833.85			Additions to Prof. through Income			
Material and Supplies	716	1,684,994.62						
Interest and Dividends Receivable	717	16,922.21						
Notes Receivable	718							
Other Current Assets	719	2,038.94						
DEFERRED ASSETS:								
Working Fund Advances	720	12,369.40						
Other Deferred Assets	722	43,382.89						
UNADJUSTED DEBITS:								
Rents and Insurance, Premiums Paid in Advance	723	4,907.20						
Discount on Funded Debt	725							
Property Abandoned Chargeable to Op. Exp.	726							
Other Unadjusted Debits	727	529,015.52						
Securities Issued or Assumed, Unpledged	728							
Securities Issued or Assumed, Pledged	729							
GRAND TOTAL—CURRENT ASSETS			4,635,856.34					
GRAND TOTAL—DEFERRED ASSETS			55,752.29					
GRAND TOTAL—UNADJUSTED DEBITS			533,922.72					
GRAND TOTAL—ASSETS								

(a) Stocks		5,170.00				
(b) Bonds		1,658,798.08				
(c) Notes		27,014.76				
(d) Advances						
(e) Miscellaneous		2,474.20				
TOTAL INVESTMENT—(ACCOUNTS 703-707, Inc.)		4,174,889.05				
GRAND TOTAL—INVESTMENTS			60,772,482.28			
CURRENT ASSETS:				CURRENT LIABILITIES:		
Cash	708	851,971.80		Loans and Bill Payable	758	-
Demand Loans and Deposits	709			Traffic and Co Service Balances, Payable	759	240,763.42
Time Drafts and Deposits	710	1,060,000.00		Audited Accous and Wages Payable	760	795,116.24
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Traffic and Car Service Balances Receivable	713	190,209.75		Dividends Matred, Unpaid	763	
Net Balances Rec. from Agents and Conductors	714	105,081.55		Funded Debt, atured, Unpaid	764	1,000.00
Miscellaneous Accounts Receivable	715	662,833.85		Unmatured Divdends Declared	765	
Material and Supplies	716	1,684,994.62		Unmatured Interest Accrued	766	286,300.00
Interest and Dividends Receivable	717	16,922.21		Other Current liabilities	768	25,777.85
Rents Receivable	718					
Other Current Assets	719	2,038.94				
			4,635,956.34			1,453,211.27
DEFERRED ASSETS:				DEFERRED LIABILITIES:		
Working Fund Advances	720	12,369.40		Other Deferre Liabilities	770	211,877.71
Other Deferred Assets	722	43,382.89				
			55,752.29			
UNADJUSTED DEBITS:				UNADJUSTED CREDITS:		
Rents and Insurance Premiums Paid in Advance	723	4,907.20		Tax Liability (Accrued Taxes)	771	503,070.12
Discount on Funded Debt	725			Premium on Funded Debt	772	
Property Abandoned Chargeable to Op. Exp.	726			Maintenance Reserves	774	
Other Unadjusted Debits	727	529,015.52		Accrued Depreciation, Road	775	
Securities Issued or Assumed, Unpledged	728			Accrued Depreciation, Equipment	776	10,364,387.56
Securities Issued or Assumed, Pledged	729			Accrued Depreciation, Mis. Physical Property	777	28,228.23
			533,922.72	Other Unadjusted Credits	778	1,698,256.63
						12,593,942.54
				CORPORATE SURPLUS:		
				Additions to Prop. through Income and Surplus	779	423,553.41
				Prop. Surplus Not Spec. Invested	781	182,623.77
				Profits and Loss Balance	784	7,851,473.57
						8,457,678.75
TOTAL ASSETS			65,998,115.63	TOTAL LIABILITIES		65,998,115.63

ANALYSIS OF ACCOUNT 716 (MATERIAL AND SUPPLIES)

ITEM	On Hand Beginning of Month	Charges During Month	Net Transfers Less Sales	Used During Month	On Hand at Close of Month
TIES	285,033.53	16,133.00	100	12,445.02	288,721.51
RAILS	82,214.14	11,195.96	127.05	3,819.53	99,463.52
FUEL	209,878.76	79,613.60	126.97	88,016.74	201,600.59
COMMISSARY	16,288.16	8,166.19	2,263.76	7,227.94	19,490.17
OTHER	1,078,487.12	146,786.08	7,360.99	135,191.30	1,085,718.81
TOTALS	1,671,901.71	264,894.83	5,097.31	246,704.61	1,684,994.62
CREDITS FROM SALES OF MATERIAL AMOUNT TO			5,097.31		
ISSUES TO OTHER ACCOUNTS FROM MATERIAL STOCK			246,704.61		
TOTAL OF ALL ISSUES FROM MATERIAL STOCK			251,801.92		

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 789

**THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY,**

Petitioner,

vs.

**GORDON BROWNING ET AL., CONSTITUTING THE STATE
BOARD OF EQUALIZATION OF TENNESSEE.**

**PETITION FOR WRIT OF CERTIORARI TO THE SU-
PREME COURT OF THE STATE OF TENNESSEE
AND SUPPORTING BRIEF.**

**WM. H. SWIGART,
SETH M. WALKER,
EDWIN F. HUNT,
W. A. MILLER,**
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 789

**THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY;**

Petitioner,

vs.

**GORDON BROWNING ET AL., CONSTITUTING THE STATE
BOARD OF EQUALIZATION OF TENNESSEE,**

Respondents.

**PETITION FOR CERTIORARI AND SUPPORTING
BRIEF.**

Petitioner, The Nashville, Chattanooga & St. Louis Railway, respectfully prays the review on writ of certiorari of the decision and judgment of the Supreme Court of Tennessee, and the judgment of this Court thereon sustaining its several pleas as herein set out, to the end that the judgment of the Supreme Court of Tennessee may be reversed and that the petitioner's original petition for writs of certiorari and supersedeas, filed in the Circuit Court of Davidson County, Tennessee, may be finally sustained. A certified transcript of the record in the case is filed herewith.

Summary Statement.

The case was begun by petition filed in the Circuit Court of Davidson County, Tennessee, upon which were issued writs of certiorari and supersedeas to the State Board of Equalization of Tennessee, directing said Board to certify to the Court the record of the assessment of the properties of petitioner for *ad valorem* taxation for the years 1938-1939, and to make no certification of said assessment in a sum exceeding ten million dollars until the further orders of the Court (R. 1-26, 52-53).¹

The filing of the original petition and the issuance of the writs "arrested the proceedings before the board of equalization, and removed the inquiry to the circuit court." *State ex rel. Vance v. Dixie Portland Cement Co.*, 151 Tenn. 53, 58.

Assessment of the property of railroad companies for taxation in Tennessee is made by the Railroad and Public Utilities Commission and the State Board of Equalization, the Board being charged by law with the duty of reviewing all evidence of value and of fixing the value of the property for assessment. Tennessee Code of 1932, Sections 1534-1535. (Quoted in dissenting opinion, Appendix, pp. 85-86.)

The evidence on which such assessments are made is required to be reduced to writing (Tennessee Code, Sec. 1523, Appendix, pp. 66-67) and all of the evidence considered in making the assessment under review was made a part of the record in this case. (See certificate of Commission and Board, R. 104-105.)

The Circuit Court ruled that no evidence could be offered in this proceeding other than the evidence certified by the Commission and Board; to which ruling there was no ex-

¹ The original tax return is filed here by order of the Chief Justice of Tennessee (R. 147, 591); all other references are to printed record.

ception, and no additional evidence was offered by either party (R. 80).

All the evidence on which the assessment was made was introduced by the Railway, and no substantial controversy of fact is presented by the evidence.

Testing the averments of the petition by the evidence certified to the court by the State Board of Equalization, the Circuit Court dismissed the petition and ordered the writ of supersedeas abated (R. 63, 78). On the appeal of the Railway, in the nature of a writ of error, the Supreme Court of Tennessee affirmed the judgment of the Circuit Court, two of the five justices of the court dissenting. The Chief Justice did not participate. Because of his illness, a member of the bar was specially appointed, who concurred with two regular members of the court to constitute the majority (R. 122, 134).

The supersedeas has, by proper order of a justice of the Supreme Court of Tennessee, been continued in effect until the disposition of this petition (R. 146).

Proper orders have been made, substituting as parties defendant the successors in office of original defendants (R. 58, 122).

The Railroad and Public Utilities Commission and the State Board of Equalization arrived at a value of petitioner's property for assessment by first fixing a value for petitioner's railroad system in the four States of Alabama, Georgia, Kentucky and Tennessee. From that value there was deducted the value ascribed to localized property, including railroad station terminal buildings and shops as well as real property not used in railroad operations, and the balance was found to represent the value of distributable property, road-bed, rolling stock and intangible property. The value so found for the distributable property was then allocated to the several States on the *sole basis* of the main track mileage in each State, notwithstanding the as-

assessors themselves valued different part of the Railway's line at widely varying figures. The aggregate value ascribed to the system was \$23,996,604.14; to the Tennessee properties \$16,223,194. The assessment is at the value so arrived at (R. 33-38, 100-102).²

Petitioner seeks a review of the judgment of the Supreme Court of Tennessee, on the ground that the judgment, and the assessment sustained thereby, operate to deny to petitioner due process of law and equal protection of the law, guaranteed by the Fourteenth Amendment to the Constitution of the United States, violate the commerce clause of Article 1, Section 8, of the Federal Constitution, and are not in accord with decisions of this Court interpreting and applying said provisions of the Constitution, in that:

(1) The assessment is made upon a valuation of petitioner's property arbitrarily arrived at by methods not likely or calculated to produce a fair or just result, in disregard of comprehensive evidence establishing a substantially smaller value for the property valued and assessed. The amount of that part of the assessment in controversy is in excess of \$6,000,000. *Great Northern Ry. v. Weeks*, 297 U. S. 135; *Southern Ry. Co. v. Kentucky*, 274 U. S. 76, 81-82.

(2) The petitioner's railroad is a complex system, operated in four States, with unprofitable branch lines (75 per cent in Tennessee) composing 38 per cent of its road mileage. There is no uniformity of value among the several branches and divisions, valued by the assessors variously at from \$3,300 to \$37,200 per mile. The value per mile in Tennessee is shown by uncontradicted evidence to be less than the system average. System value allocated to Tennessee on the sole basis of road mileage adds to the Tennessee as-

² References herein are to the assessment, Exhibit No. 2 to the original petition for certiorari, "in words and figures" as certified by the Railroad and Public Utilities Commission (R. 89).

assessment values existing, if at all, only in other States and not subject to taxation in Tennessee. *Fargo v. Hart*, 193 U. S. 490, 500; *Rowley v. Chicago & N. W. Ry.*, 293 U. S. 102, 109-110.

(3) The Constitution of Tennessee requires that all property be assessed for taxation at actual value, in order to secure equality, with no species of property taxed higher than other property of the same value. Pursuant to a systematic plan and method practiced for more than forty years by local assessors in Tennessee, the general mass of property was intentionally and wilfully assessed for taxation in 1938 at an arbitrary percentage adopted by the several assessors, averaging not more than two-thirds of actual value, the rate of assessment in no county or city of the State exceeding three-fourths of actual value; while the property of petitioner is assessed for the same taxes for the same year at 100 per cent of its actual value as found by the assessors, (and in fact at substantially more than actual value), in direct violation of the constitutional principle of equality. *Greene v. Louisville & Interurban R. Co.*, 244 U. S. 499, 516-518; *Sioux City Bridge v. Dakota County*, 260 U. S. 441, 445-447.

Jurisdictional Statement.

The jurisdiction of this Court is invoked under the Act of Congress of February 13, 1925, Chapter 229, 43 Statutes at Large, 936, amending and reenacting Section 237 (b) of the Judicial Code.

The judgment sought to be reviewed was rendered by the Supreme Court of Tennessee, the highest Court of the State in which a decision in the suit could be had, on December 16, 1929 (R. 122), the effective date of the decision having been postponed until the disposition of petitioner's petition for rehearing which was denied on January 20, 1940 (R. 143). The opinions of the State Court are not reported.

This application for the writ of certiorari will be filed on or before March 5, 1940, in compliance with the condition upon which the assessment is stayed by order of a Justice of the State Court, pending disposition of this proceeding (R. 146).

The nature of the case is set out in the summary statement hereinabove, presenting the complaint of the petitioner that, except it be granted relief in this proceeding, its property in Tennessee will be subjected to a grossly excessive and arbitrary assessment for *ad valorem* taxation by the State of Tennessee, and its counties and cities, which assessment was made by arbitrary and illegal methods, denying to petitioner the equality in taxation required by the Constitution of Tennessee, depriving petitioner of rights and immunities guaranteed to it by the "equal protection of the law" and "due process of law" clauses of the Fourteenth Amendment to the Constitution of the United States; and subjecting its operations in interstate commerce to discriminatory and unreasonable burdens, in violation of Article 1, Section 8, of the Constitution of the United States.

The Federal questions involved are substantial. The part of the assessment in controversy exceeds \$6,000,000. The average county tax rate in Tennessee is \$2.22 per \$100.00, and the State tax rate is \$.08 per \$100.00. (Affidavit McKeand, R. 301) Municipal taxes are in addition. Taxes on the disputed part for the biennium will amount to more than \$300,000.00.

Arbitrary and unreasonable methods employed by the assessors to arrive at a grossly excessive valuation of petitioner's property for assessment, and the ruling of the State Court thereon, are set out herein at pages 10-19. The constitutional rights and immunities here invoked were pleaded in the original and amended petition, by which the suit was begun in the trial court (Circuit Court of Davidson County)

(R. 9-15, 57-58). They were presented to the State Supreme Court by petitioner's first, second and third assignments of error (R. 107-108).

That the allocation of system value to Tennessee on the sole basis of road mileage, in spite of uncontradicted proof of a total lack of uniformity in the various parts of the system and of the smaller value of the part of Tennessee than that outside the State, is contrary to the Constitution and the decisions of this Court, is shown herein at pages 19-23. The constitutional rights invoked were pleaded in the original and amended petition (R. 15-17, 56-57); repeated in petitioner's fourth and fifth assignments of error in the State Supreme Court (R. 109-110).

The record shows that for more than forty years the Legislature and Courts of Tennessee have refused or failed to effectively secure to Tennessee taxpayers the constitutional guarantee of equality in assessment for taxation. Discrimination against railroads and utilities is magnified by the dual assessment system; the property of individuals, holding the voting power, being assessed by local assessors, and the property of railroads and public utility corporations being assessed by a central commission and board.

The history of the ineffectual effort to attain uniformity appears from the affidavits of W. H. Swiggart, and the exhibits thereto (R. 323-333). The practice of underassessment has been judicially noticed by the Supreme Court of Tennessee. *Wray v. Railroad Co.*, 113 Tenn. 544, 560. It was the basis of judicial relief in *Taylor v. Louisville & N. R. Co.*, 88 F. 350, and in *Trustees, Cincinnati Sou. Ry. v. Guenther*, 19 F. 395.

Surveys made by impartial agencies, not connected with this litigation, establish without controversy the continuance of the system of underassessment by local assessors to the present time. (First and second affidavits of W. R. Poudier, and exhibits, R. 333, 348.) Local assessors of

twenty-five of the thirty-one counties in which petitioner's property is taxed admit adherence to the system (R. 347-446). There is no evidence to the contrary. Since 1920, when there was a general revaluation of property for assessment, the aggregate assessment of property assessed locally has decreased 28 per cent; that assessed by the Railroad and Public Utilities Commission only 7 per cent; *while the assessment of petitioner's property is increased 5 per cent over 1920*. The decrease in the aggregate assessment of farm lands and implements since 1920, assessed locally, is 49 per cent (R. 336-337).

The Railroad and Public Utilities Commission makes no effort to equalize its assessments with assessments made by county assessors. (See statement of former chairman, R. 325-326.) The State Board of Equalization dismissed petitioner's claim with a casual observation that the witnesses had not sufficiently stated the basis of their testimony showing intentional undervaluation of property for assessment. Authorized by statute to make full investigation the Board made none (R. 100-102).

The Circuit Court (trial court) ruled that it was not its duty to determine what weight should be given to the undisputed proof of underassessment, on the theory that only an error of judgment was involved, and declined to follow the rule in *Stout City Bridge Co. v. Dakota County*, 260 U. S. 441 (R. 86-87).

The Supreme Court of Tennessee declined to sustain the petitioner's claim to equalization, indulging a technical presumption that the State Board of Equalization had not participated in the underassessment of other property, and ruling that it was essential to petitioner's case that the State Board had participated in an intention or fraudulent purpose to disregard the fundamental principle of uniformity (R. 131-132; Appendix, p. 80.)

This ruling interposed a non-substantial and immaterial presumption to defeat uncontradicted proof of inequality and discrimination in assessment. Action by the State Board was not essential to the finality of the ratio-assessments made by the local assessors, except on "specific" complaint sworn to by a taxpayer that other property had been underassessed, or assessed "at a less percentage of value than his own property." Code of Tennessee, sections 1433, 1450; Appendix, pp. 65, 66. The Railway's assessment was not made until a year after the completion of the local assessments, and since each local assessor applied the same percentage of value throughout his jurisdiction, no taxpayer so assessed had motive or incentive to invoke action by the State Board increasing his own and other assessments. There is no evidence that any such complaint was made.

The State Board is prohibited by law from increasing "a single assessment" without specific notice to the property owner affected, affording him a hearing, with the right to introduce evidence. Code of Tennessee, section 1453; Appendix, p. 66.

The ruling of the Supreme Court of Tennessee is in direct conflict with the decision of this Court in *Greene v. Louisville & Interurban R. Co.*, 244 U. S. 499, 518, and in *Sioux City Bridge v. Dakota County*, 260 U. S. 441, 446.

At every step of this proceeding petitioner has been denied a consideration of the merits of its claim to fair valuation and equalization, through the indulgence of technical rules of procedure or presumption. Action by this Court, under the Fourteenth Amendment to the Constitution of the United States, is necessary to the preservation of petitioner's constitutional rights in this and future assessments, and of those like situated in Tennessee.

The record demonstrates that the methods employed by the Tennessee assessors for ascertaining the value of rail-

road properties for assessment lag far behind those established by modern study and usage, as reflected in the cited opinions of this Court, and are neither scientific nor just. The importance of a present factual consideration of value, both to the railroads and to the State, is clearly stated in the dissenting opinion of Mr. Justice Chambliss herein, appendix, pp. 89-91. The dual system of assessment, with the statutory prohibition of increase by the State Board of Equalization of assessments made locally, except on specific and sworn complaint of a taxpayer, with notice to each owner of underassessed property and right of hearing, will perpetuate the proven inequality in the assessment and taxation of railroads and utilities in Tennessee, unless relief is accorded petitioner in this case.

The failure of the State's representatives to produce any evidence to refute the proven discrimination in assessment is an implied admission of the inequality denounced by the Federal Constitution, which the State in this proceeding seeks to perpetuate. Such disregard of the constitutional principle of equality in taxation justifies and requires the condemnation of the assessment herein by the judgment of this Court.

The Federal questions arising from the arbitrary discrimination in assessment were presented in the original petition by which the assessment proceeding was removed to the Circuit Court of Davidson County, Tennessee, and were repeated in the seventh and eighth assignments of error filed in the Supreme Court of the State. (Original Petition, R 18-20; Assignments of Error, R. 111-113.)

**The Assessment was Arbitrarily Made and is Grossly
Excessive.**

The original petition averred that the value ascribed by the assessors to petitioner's system property was "an arbitrary value which is not supported by nor sustained by any

evidence submitted to or properly considered by said Commission" (R. 10-11). The petition avers that the valuation so made is nearly fifty per cent in excess of the value shown by a reasonable capitalization of the earnings of the property, averaged over a period of five years, without support in evidence for such excess; and shows that the assessors had so manipulated the assessment of two years before as to arrive at a present value per mile of the railroad in Tennessee which produced an identical assessment in Tennessee for a reduced mileage which had been made on a greater mileage two years before (R. 13). An amendment to the petition avers that this manipulation of a former assessment was made the basis of the present assessment, without consideration of the evidence filed with the Commission (R. 58). The petition and amendment aver that the assessment so made denies to petitioner its rights under the "due process of law" and "equal protection of the law" clauses of the Fourteenth Amendment to the Constitution of the United States (R. 15, 58).

1. The 1936 assessment appears at R. 322; the present (1938) assessment at R. 37. The arbitrary method by which the Commission reached an identical assessment of distributable property for the four years, 1936-1939, is shown by the following table:

1936 Assessment

838.98 miles at \$15,407.929 per mile	\$12,926,944
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1938 Assessment

800.02 miles at \$16,158.276 per mile	\$12,926,944
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To produce this identity of assessment, after an interval of two years, involving the use of tenths of a cent in the valuation of a mile of railroad, the assessors increased their earlier valuation by \$750.247 per mile, exactly offsetting the abandonment of 38.96 miles of main line included in the

1936 valuation. This result could have been achieved only by a backward process, designed to reach a predetermined assessment figure.

The dissenting opinion of Mr. Justice Chambliss views this evidence as demonstrating that the previous assessment was "not only considered, but adopted," notwithstanding the proof "calls for at present a thoroughgoing investigation of basic elements of value applicable to present day conditions" etc.³ (R. 141, 142; Appendix, pp. 91, 92).

The majority opinion of the State Supreme Court misconceived the position of petitioner, and failed to note the identity of result, because there was a reduction in the total assessment from 1936. The Court failed to note that this reduction was wholly in the valuation of localized property, valued separately from the distributable property. Opinion, R. 133; App., pp. 81-82.

A similar identity of assessment over a period of three years was held to constitute evidence of intentional overvaluation for assessment by the United States Circuit Court of Appeals for the Eighth Circuit (1939) in *Bailey v. Megan*, 102 F. (2d) 651 (Headnote 12, page 657), citing *Great Northern Ry. v. Weeks*, 297 U. S. 135, 151, as authority for a judgment enjoining the enforcement of the excessive amount. Petitioner relies here on these cases.

2. Evidence was filed with the assessors, contained in the printed record in this Court, showing the financial history and structure of petitioner, its operating results for many years, the disastrous effect on former values of a revolution in transportation, etc., resulting in an accumu-

³ Mr. Justice McKinney, dissenting, said:

"The State Board of Equalization, furthermore, seems to have been largely influenced by the 1936-1937 assessment of the Railway property, which, it states, the record shows was agreed to by the Railway. Such statement is not supported by the record; but if it was that would be no criterion of value, since the statute expressly provides the method by which such value is to be ascertained." (Appendix, p. 87.)

lated deficit for the seven-year period, 1931-1937, of \$2,708,959.00.

The response of the Railroad and Public Utilities Commission to this comprehensive evidence is copied in full in the margin.⁴ Its reference to the petitioner's ownership of a substantial amount of cash and "non-taxable Federal notes and bonds" constitutes arbitrary action, indicating an assessment rested on ability to pay rather than on value subject to assessment. And the statement that petitioner's revenues "were increasing since the tentative assessment was made" is without support and untrue.

This reliance on the ownership of "non-taxable" securities (\$2,081,774) as a basis for the assessment, was urged upon the State Board of Equalization by the Commission's "rate expert," Mr. Hendley, in presenting the case to the Board for the Commission (R. 99-106).

While the Commission indicated in the tentative assessment, made in August, 1938, that it had made "due allowance" for non-taxable securities, its response to petitioner's exceptions and proof, filed in October, (R. 92), demonstrates a change of position.

The Commission, through Mr. Hendley gave further evidence of the arbitrary process by which it made its valuation, by arguing that value must rest upon "gross receipts" and not upon net income.⁵ Gross receipts alone are not

⁴ "Written exceptions to the tentative assessment were filed; new evidence, affidavits and exhibits were also filed and argument heard. Evidence indicated the corporation's net railway revenues were increasing since the tentative assessment was made and that its present financial condition was good, that is, it had on hand \$3,569,801 in cash and non-taxable Federal bonds and notes. After carefully considering all evidence and other matters submitted, we are of the opinion and find that exceptions should be, and they are, hereby denied" (R. 92).

⁵ Mr. Hendley said:

"Not once in the law do we find the word 'net.' The law sets out plainly what shall be considered and those elements principally are the gross

evidence of value. In 1916 petitioner's gross operating revenues were nearer in amount to the revenues for 1937 than in any other year. Approximately the same revenues produced in 1916 a net income of three million dollars; in 1937 a deficit of \$471,623. Exhibit No. 2 to testimony L. E. McKeand (R. 306-A).

3. The assessment values the petitioner's localized property in Tennessee in the brief sentence: "We find the value of such localized property in Tennessee as returned by the corporation to be \$3,297,250" (R. 37).

This property consists of several thousand items, each of which is separately valued by petitioner in its tax return, the aggregate being \$2,387,395. See original tax return filed with printed record, page A, and items at pages 25-97. *There is no other evidence of the value of these many items, and the addition by the assessors of \$909,855 to the aggregate, with no supporting evidence and without even indicating which items were increased, is cited as direct evidence of arbitrary and capricious overassessment (Assessment, R. 37).*

The Commission certifies that all evidence considered in making the assessment is made a part of the court record (R. 104-105).

The value arbitrarily ascribed to the Tennessee localized property, \$3,297,250, was by the Commission added to the value it had ascribed to the distributable property by the backward process hereinabove demonstrated, and to that total was added the value of localized property outside Tennessee as reported by the petitioner, the aggregate making up the \$23,996,604.14 reported as the system value. See assessment (R. 37).

receipts, the value of the stocks and bonds and the value of the corporate property" (R. 98).

This position is aptly criticised by Mr. Justice Chambliss, Appendix p. 91.

The State Supreme Court passed this evidence of arbitrary valuation with the ruling, on petition to rehear: "This attack on the assessment was not *specifically* made by any of the assignments of error filed in this court," and again: "The railway did not *specifically* assign as error the action of the Commission and Board in assessing its localized property at \$3,297,250." (Italics added.) (R. 143-144; Appendix, pp. 93-94.)

Petitioner has not asked, and does not now ask, that the assessment of localized property be separately adjudged null and void. In its original brief in the State Supreme Court, as here, it urged the obvious arbitrariness of the unsupported addition to the values shown by the return, as evidence supporting the second and third assignments of error in the State court (R. 107-8) that the valuation made of the railroad system, as a basis for the assessment, is without support in the evidence and is unreasonably excessive and confiscatory, etc.

4. That the valuation placed by the assessors on petitioner's railroad system is grossly in excess of the value reasonably deducible from the evidence is shown clearly on the record. The evidence of value is set out and discussed in the supporting brief, at pp. 42-49. Capitalization of the average net operating revenues over a period of seven years, with net income from non-operating property added, indicates a system value of only \$16,021,298, one-third less than the value found by the assessors.⁶ Exhibit No. 4 to testimony L. E. McKeand (R. 308); Ev. McKeand (R. 297-298).

5. The State Board of Equalization was required by law to review the evidence and finally fix the value of peti-

⁶ Combination of the stock and bond test and capitalization of income test, as in *Great Northern Ry. v. Weeks*, 297 U. S. 135, 147-149, shows a maximum system value of \$18,815,494 (Brief 45).

tioner's property for assessment. The applicable statutes are copied in the dissenting opinion of Mr. Justice McKinney (R. 135-137; Appendix, pp. 84-86).

The majority opinion of the State court does not differ with the view expressed in the dissenting opinions, that it was the statutory duty of the Board of Equalization to review the evidence and fix the value of the property for assessment. On the rehearing the court said: "This court did not hold that the examination by the Board of the assessment was dependent upon the railway's appeal or limited or restricted thereby" (R. 144; Appendix, p. 94.)

The opinion of the State Board of Equalization is copied in the appendix hereto, at pp. 68-70. It made no finding with respect to the value of the property, except to note a reduction in assessment since 1929 "comparable with the reduction enjoyed by owners of other property, or any class of property," and "assumed" that the valuation made by the Railroad and Public Utilities Commission was made on a consideration of the evidence. That the Board totally abrogated its statutory duty is demonstrated by the dissenting opinions, to which reference is here made (R. 135, 138; Appendix, pp. 84, 88).

"The extraordinary shrinkage in values of railroad properties," referred to by this Court in *Great Northern Ry. v. Weeks*, 297 U. S. 135, 151, and shown by the proof herein, was ignored by the Board.

The State Board of Equalization is composed of the Governor of Tennessee, the Secretary of State, the State Treasurer, the Commissioner of Finance and Taxation and the Commissioner of Administration, acting "ex officio." Code of Tennessee, sec. 1447; Public Acts of Tennessee, 1937, chapter 33. The Commissioner of Finance and Taxation and the Governor did not sit in this case. Appendix, p. 70.

6. The assessment purports to rest on the financial structure and operating results of the property. (R. 33-38.) It in fact rests upon a valuation arrived at by arbitrary methods not likely to produce a fair result and which is "in excess of the amount upon which it can honestly be believed the property is capable of earning an acceptable return." It therefore cannot be sustained. *Bailey v. Megan*, 102 F. (2d) 651, 655, citing *Great Northern Ry. v. Weeks*, 297 U. S. 151.

7. Section XII of the original petition charged that the overassessment of petitioner's railroad property, employed as an agency of interstate commerce, will result in the exaction from the property of unjust and illegal taxes, and to that extent impair petitioner's ability to properly function as a common carrier in interstate commerce. It was there charged that the assessment constitutes an unreasonable, arbitrary and direct burden upon interstate commerce, in violation of Article 1, section 8, of the Constitution of the United States (R. 21-22).

8. These several contentions, and prayers for relief under the cited sections of the Constitution of the United States, were repeated in the first, second and third assignments of error made by petitioner in the Supreme Court of Tennessee, and specific reference to said assignments of error is here made. (R. 107-108).

9. The Supreme Court of Tennessee denied petitioner's asserted constitutional rights and immunities on the ground that, by judicial rule in Tennessee, the valuation for assessment by the State Board of Equalization is not subject to review by the courts "where the Board has not with reference to the assessment, exceeded its jurisdiction or acted illegally or fraudulently," but added: "Where, however, the Board acts illegally, fraudulently or in excess of its jurisdiction, certiorari is the proper remedy." (R. 125, Ap-

pendix, p. 73.) In denying rehearing the Supreme Court said:

"The Board had jurisdiction. It did not act illegally. The railway makes no claim of fraud as against the Commission or the Board. The valuation placed on the properties of the railway for taxation by the Board cannot be reviewed by the courts, in the absence of fraud. See authorities cited in opinion." (R. 145, Appendix, p. 95.)

The State Supreme Court correctly held that the statutes of Tennessee do not require that net income be made a predominant factor in arriving at the value of railroad property for assessment, but wrongfully declined to review the evidence to determine the truth of petitioner's averment that this record contains no evidence upon which a conclusion of value can be properly reached, save by consideration of its income-producing capacity. The court discussed general rules of law but declined to consider the evidence on which the particular assessment must find support.

Petitioner invokes the rule stated in *Great Northern Railway v. Weeks*, 297 U. S. 135, 151:

"In cases such as this, courts are not permitted to weigh evidence of value. They may not substitute their opinions for the findings of assessing officers or boards. But, when the jurisdiction of the district court is appropriately invoked, it is its duty to decide upon the merits of the taxpayer's claim that the assessment of his property was arbitrarily made and is grossly excessive."

The original petition having charged that the assessment was arbitrarily made and was grossly in excess of the value shown by the evidence, all of which was before the court, and it having been charged that enforcement of such assessment would violate the constitutional rights and inhibitions cited, petitioner was entitled to the decision of the State

court on the merits of its claim. Such decision having been denied on the erroneous theory that violation of the constitutional rights invoked does not amount to illegality, petitioner is entitled to certiorari from this Court, and to a judgment sustaining its claim or remanding the case to the Supreme Court of Tennessee for decision of the merits of the rights asserted by petitioner.

Allocation of System Value to Tennessee.

The assessment of petitioner's distributable property in Tennessee is made by allocation of system value to the state on the sole basis of ratio of road mileage in Tennessee to road mileage of the system. (Assessment, R. 37.)

Section VIII of the original petition avers that this method of allocation, assigning to Tennessee 71.73 per cent of the system value, is unreasonable, arbitrary and confiscatory, in that values existing only in other states are by this means imported into Tennessee and are given a situs for taxation, contrary to the "due process of law" clause of the Fourteenth Amendment to the Constitution of the United States (R. 15-17).

The petition avers that the value of the distributable property per mile in Tennessee is substantially less than the per mile value of the system outside Tennessee. It is averred that branch line mileage constituting 38 per cent of the system, handles only 4.4 per cent of the gross tonnage and only 1.2 per cent of the passenger traffic of the system, and that 75 per cent of this branch mileage is in Tennessee; that only 64.11 per cent of the system value found by the Interstate Commerce Commission, brought down to date, is assigned by the Commission to Tennessee; that the net railway operating income per mile of main track in Tennessee is only 41.84 per cent of the per mile income outside Tennessee. The petition avers that the value of petitioner's distributable property in Tennessee, subject to taxation in that State,

is not in excess of 64.11 per cent of the value of the system property (R. 15-16). Failure of the Commission to find uniformity in value as a basis for the allocation is expressly averred in an amendment to the original petition (R. 56-57).

Abundant proof, uncontroverted, is in the record, sustaining the averments of the petition (Brief, 49-52). The difference in assessment between the 71-73 per cent of system value assigned to Tennessee by the assessors, and the 64.11 per cent averred in the petition as the proper measure of value, increases the assessment by an amount in excess of \$1,000,000.

The constitutional rights and immunities so asserted by the petition were presented to the Supreme Court of the State by the fourth and fifth assignments of error (R. 109-110).

The assessment itself negatives any finding of uniformity in the value of the distributable property of petitioner's railroad system. An early Tennessee decision, (1883) requires the Commission to separately find the value for assessment of each branch or division of a complex railroad system. *Louisville & N. R. Co. v. Bate*, 80 Tenn. 573, 579-580. In complying with this rule of the Tennessee courts the Commission expressly found values per mile ranging from \$3,300 for four of the branch lines to \$37,200 for the Chattanooga and Atlanta Divisions (R. 38). Less than one-half of the Tennessee mileage is valued by the assessors at a sum per mile as great as the average found for the system. The mileage of each division, including the mileage outside Tennessee, is stated on page 10 of the original tax return, filed with the printed record. If the value per mile for each division stated in the assessment is applied to the entire division, the aggregate result is a system value for distributable property nearly \$2,000,000 in excess of the aggregate found for the system by the

Commission) itself; a result which clearly impeaches the method of allocation applied.

The assessors were required by rule of the Supreme Court of Tennessee (*Louisville & N. R. Co. v. Bate*, 80 Tenn. 573) to separately value the several divisions and branches of the railroad within the State, for allocation of distributable value among the taxing districts. In the case cited the complex nature and varying value of petitioner's system were noted as demonstrating the necessity for the rule.

Finding disparity of value in the several parts of the system, in complying with the Tennessee rule, the assessors did not make the inconsistent finding of uniformity of value per mile of track in the several states, but without attempt at justification made the allocation on the sole basis of road mileage. See amended petition for certiorari (R. 57). This arbitrary action of the assessors produced the anomalous ruling of the State court sustaining inconsistent methods of allocating the same values among taxing jurisdictions in the same assessment.

The assessors classify 39.7 of the road mileage in Tennessee as "branch lines," and assign to that mileage only 13 per cent of the value allocated to the State. The remaining 87 per cent of value allocated to Tennessee is assigned to 60.3 per cent of the main track (Assessment, R. 38). The assessors conclusively rejected the theory of uniformity in value of the several parts of the system.

The Supreme Court of the State cited only the early cases of *Pittsburgh, C., C. & St. L. Ry. v. Backus*, 154 U. S. 421, and *Cleveland, C., C. & St. L. Ry. Co. v. Backus*, 154 U. S. 439, as sustaining "the well established rule for assessment on a mileage basis." The Court said:

"Furthermore, the exception to the rule contemplates, we think, that it be clearly shown that the por-

tion of the road out of the State has a greater value than the part within the State, such as terminal facilities or other improvements not found within the State" (R. 130; Appendix, p. 78).

The Court further ruled that the record "does not disclose that the portions of the railroad outside Tennessee are largely of greater value than the portion within the State, or that any special circumstances exist to show a greater value outside the State than within the State" (R. 130; Appendix, p. 78).

There being no controversy in the evidence, the ruling of the Supreme Court is a conclusion of law that a substantial difference in cost, in use, and in operating income, in favor of that portion of the Railway outside the State, does not establish a greater value for that portion of the road than for the portion within the State. The uncontroverted evidence shows that by every test of value, appropriate to the valuation of railroad property, a great disparity exists between the value of the property in Tennessee and the value outside the State, and the assessment itself shows that the allocation was made notwithstanding the expressed conclusion of the assessors that the system, including 38 per cent branch line mileage, is not of uniform value, two of the divisions being valued at a per mile value more than ten times that ascribed to four of the branches. Reference is made to the table of ratios on page 51 of the supporting brief, demonstrating the disparity between the value of the Tennessee Mileage and that outside the State.

The decision of the Supreme Court of Tennessee on this branch of the case is a denial of the constitutional rights and immunities asserted by the petitioner, notwithstanding uncontroverted evidence sustaining the claim of constitutional violation. Petitioner is entitled to the writ of certiorari and to the judgment of this Court that the alloca-

tion of system distributable property to Tennessee for assessment operates to deprive the petitioner of "due process of law" because made by a method which does not "fairly reflect the relation between value of the system as a whole and value of the part within a State," subjecting property values to taxation in Tennessee which exist only in other States. .

Great Northern Ry. v. Weeks, 297 U. S. 135, 144;

Rowley v. Chicago & N. W. Ry., 293 U. S. 102, 109-110;

Wallace v. Hines, 253 U. S. 66;

Union Tank Line v. Wright, 249 U. S. 275;

Fargo v. Hart, 193 U. S. 490, 500;

Pittsburgh etc. Ry. v. Backus, 154 U. S. 421;

Southern Ry. Co. v. Kentucky, 274 U. S. 76.

Petitioner was Denied Equalization.

The Constitution of Tennessee does not permit classification of property for purposes of *ad valorem* taxation, but directs that all property shall be taxed according to its value, so that taxes shall be equal and uniform throughout the State. It is further provided in the State Constitution; "No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value."

Constitution of Tennessee, Article 2, Sections 28-29.

Quoted, Brief, pp. 52-53.

The Supreme Court of Tennessee has ruled that the sole and manifest purpose of the constitutional provision for the taxation of property according to its value "was to secure uniformity and equality of burden" etc. *Treadwell Realty Co. v. Memphis*, 173 Tenn. 168, 174; 116 S. W. 2d 997.

The remedy provided by law in Tennessee for the correction of inequality in assessments, which it is the pri-

mary duty of the Board of Equalization to equalize, as its name imports "is by certiorari in a court of law." *King v. Bristol*, 156 Tenn. 643, 4 S. W. 2d 343; *Briscoe v. McMillan*, 117 Tenn. 115, 133-134, 100 S. W. 111.

The original petition for certiorari to the State Board of Equalization, in section X, avers that all property, except that of railroads and public utilities, is assessed for taxation by county and municipal tax assessors; that the property of the petitioner is located in thirty-one counties, in which it is respectively subject to taxation at the same rate as property assessed by county and municipal assessors, and for the same purposes; that by statute of general application the State levies a tax on all property of eight cents on the \$100.00 of value, and that the average rate of taxation of the several counties is \$2.22 per \$100.00 of taxable value, to which municipal taxes are added; that taxes for the year 1938 on property generally, other than that assessed by the Railroad and Public Utilities Commission, are levied on assessments made by local assessors in 1937; that for more than forty years, up to and including the 1937-1938 assessments, the several county and municipal tax assessors in Tennessee have voluntarily, intentionally, wilfully and systematically assessed property within their several jurisdictions at less than actual cash value, pursuant to which established custom and intentional scheme of assessment property in no county of the State is assessed at more than 75 per cent of actual cash value, and the average of all assessments made by the several county and municipal tax assessors, as the basis for taxation for 1938, is not in excess of 66 $\frac{2}{3}$ per cent of actual cash value; that the valuation and assessment of petitioner's property was made by the Railroad and Public Utilities Commission and State Board of Equalization on the basis of 100 per cent of the taxable value of such property, and

is in fact greater than the actual or 100 per cent value of the property (R. 18-20).

The original petition for certiorari further avers that the application of the several tax levies to the assessment of petitioner's property will require and exact of petitioner a substantially greater tax than is required and exacted of the property of other taxpayers, with the same result as if the property of petitioner were taxed at a rate one-third higher than the rate applied to the property of other taxpayers; all of which is charged to amount to a denial to the petitioner of the rights, privileges and immunities guaranteed and preserved to it by the Constitution of Tennessee, Article 2, section 28, and by the "due process of law" and "equal protection of the law" clauses of the Fourteenth Amendment to the Constitution of the United States (R. 20; Amendment to Petition, R. 58).

The petitioner's claim that the inequality in assessment set out in the petition was a denial to it of "due process of law" and "equal protection of law," guaranteed by the Fourteenth Amendment to the Constitution of the United States, was duly and properly presented to the Supreme Court of Tennessee by petitioner's assignments of error Nos. seven and eight, to which reference is here made (R. 111-113).

The averments of the petition for certiorari were supported by uncontroverted proof of the existence of a long-continued and well-established practice and custom of underassessment by local tax assessors throughout the State of Tennessee, followed in the assessment of property in the year 1937, upon the basis of which 1938 taxes are levied, as set out in the petition. The evidence includes the results of an impartial survey and investigation in every county and municipality of the State by the Tennessee Taxpayers Association, made prior to the institution of this suit, for presentation to the Legislature of Tennessee in

the public interest, and not on behalf of the petitioner. Testimony of officers of the Association who conducted the survey sustains the averment of the petition that in no county or municipality of the State is property assessed by the local assessors at more than 75 per cent of actual value, and that the average is about two-thirds of actual value (R. 333-343, 448).

The proof includes a report by the State Comptroller of the Treasury in 1894 showing the establishment of the custom of underassessment at that date, and a report of a Commission appointed by the Governor in 1915, demonstrating the uninterrupted continuance of the practice of underassessment (R. 324-325).

In addition to this general evidence testimony of the local tax assessor or members of the county board of equalization in twenty-five of the thirty-one counties in which petitioner's property is located affirms the intentional and systematic observance of said custom and practice of underassessment, and establishes the fact of such underassessment of property generally for the year 1938 (R. 347-446). Eighteen of the thirty-one county tax assessors so testified, and members of the county board of equalization from nineteen of the thirty-one counties so testified. This evidence is set out more particularly at pages 60-63 of the supporting brief, with references to the pages of the record where it is to be found. Testimony of other county officers and citizens possessing knowledge of the facts was also offered from each of twenty-seven counties.

No evidence was offered to the contrary. The record shows that the evidence of the petitioner was filed with the Railroad and Public Utilities Commission nearly sixty days prior to the review of the assessment by the State Board of Equalization, and the evidence was permitted to stand without contradiction or effort at impeachment.

The response made by the State Board of Equalization to petitioner's claim that it was entitled to have its assessment reduced by one-third, in order to secure equality in taxation with other taxpayers was casual and laconic. After observing that the members of the Board served *ex officio* and had not adequate time "to give the necessary investigation to entirely satisfy even ourselves that we may reach an equitable conclusion," the Board referred to the affidavit of the Executive Secretary of the Tennessee Taxpayers Association and said: "This information is very interesting but we are not familiar with the method used by him in reaching his figures on actual cash value, nor do we know how the percentage of cash value was reached for assessable purposes. Many other affidavits are in the record purporting to establish that theory, but we think they are subject to the same objection as that of Mr. Ponder" (R. 102; Appendix, p. 70.)

There was no further discussion of the evidence by the State Board of Equalization. It did not refer to the fact that the assessors who themselves had made the assessments of other property had testified that they had voluntarily, intentionally and systematically returned property for assessment at values representing a ratio of actual value, in no case in excess of 75 per cent of actual value.

The Board concluded: "For the foregoing reasons, we are satisfied that the assessment of companies [*sic*] property is just and fair to it, and in line with all other like property within the state." (Italics added.) (Appendix, p. 70.) The use of the qualifying adjective "like" is a clear admission by the Board that it did not intend to find the assessment in line with assessment of property other than railroads. This qualification by the Board was not noted by the Supreme Court of the State.

The Supreme Court of Tennessee, responding to the petitioner's asserted right to equalization, referred to the

statutory oath of county assessors and boards of equalization to make and equalize assessments at actual cash value. It did not review the evidence, nor indicate an opinion that the proof was not sufficient to establish the underassessment of the general mass of property in the State. Its ruling was as follows:

"If the county assessors and the few members of county boards of equalizers making affidavits on the hearing before the Commission assessed property at less than actual value, and did so intentionally and systematically there is no showing whatever that the members of the State Board of Equalization violated their oath of office by underassessing property. In the absence of a contrary showing, it must be assumed that the State Board did their duty. There is neither allegation nor proof that the State Board intentionally and systematically refused to equalize assessments at actual value. The good faith of such officers and the validity of their actions are presumed. *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350, 62 L. Ed. 1154. In order to support a claim of discrimination under the equal protection clause of the Fourteenth Amendment there must be something that amounts to an intention or the equivalent of fraudulent purpose to disregard the fundamental principle of uniformity" (R. 131-132; Appendix, p. 80).

The court's reference to "the few members of county boards of equalizers" indicates its failure and refusal to consider the evidence submitted to it. Members of the county board of equalization from nineteen of the thirty-one counties in which petitioner's property is located made affidavit that they had consistently and intentionally followed the practice of equalizing assessments in their respective counties on the basis of a percentage, in no case exceeding 75 per cent, of the actual value. Evidence reviewed at Brief, pp. 60-63.

This Court has ruled that the statutory oath of tax assessors is not only no bar to the competency and weight of their testimony that they had followed a custom and practice of underassessment, but that, in a like case "They were called because they were men of long experience in assessing property in the county and state, to testify to the existence of systematic and intentional undervaluation of the property of others—of property generally."

Bohler v. Calloway, 267 U. S. 479, 491.

The State Supreme Court apparently conceived it to be necessary, to sustain the petitioner's claim, that the State Board of Equalization, having refused to recognize petitioner's claim, had participated in the systematic and intentional underassessment of other property; and the assignments of error were apparently overruled on the basis of the statement in the opinion "There is neither allegation nor proof that the State Board intentionally and systematically refused to equalize assessments at actual value" (Appendix, p. 80).

Such allegation and proof would have been inapt, and were wholly unnecessary. Assessments made by local assessors are by statute made "final," except in so far as they "may be" revised or changed by the State Board. (Code of Tennessee, section 1433; Appendix, p. 65.) Such revision or change by the State Board is conditioned upon the filing of a specific, sworn complaint by a taxpayer that other property is underassessed or assessed "at a less percentage of value than his own property" (Code, section 1450; Appendix, p. 66), and each property owner affected by such complaint must be accorded notice and hearing, with the right to offer counter-evidence (Code, section 1453, Appendix, p. 66). Since the proof shows local assessments at a uniform percentage of actual value within the jurisdiction of each local assessor, no taxpayer has ground,

motive or incentive to so invoke review by the State Board. The State Supreme Court presumed compliance with conditions clearly impossible of performance.

Sioux City Bridge v. Dakota County, 260 U. S. 441, 447.

Iowa-Des Moines Nat. Bank v. Bennett, 284 U. S. 229, 247.

A presumption that complaints of underassessments were in fact filed with the State Board, and that the Board issued multiple notices, conducted hearings thereon, and increased assessments to actual value, would pile presumption upon presumption, in violation of well-established rules of judicial procedure. Certainly constitutional rights to equal protection of the law may not be so defeated.

• *United States v. Ross*, 92 U. S. 281, 284.

The proof negatives any presumption that underassessments made by local assessors were in fact increased to actual value by the State Board (Brief, pp. 58-64).

Petitioner particularly invokes the ruling of this Court in *Greene v. Louisville & I. R. Co.*, 244 U. S. 499, 518, wherein, approving and quoting the opinion of Mr. Justice Taft in *Taylor v. Louisville & N. R. Co.*, 88 Fed. 350, 362, the court, speaking through Mr. Justice Pitney, said:

“After pointing out the similarity of the case to *Cummings v. National Bank*, *supra*, and declaring (p. 372): ‘An intentional undervaluation of a large class of property when the law enjoins assessment at true value, is necessarily designed to operate unequally upon other classes of property to be assessed by other taxing tribunals, who, it may be presumed, will conform to the law,’ the court further said (p. 374): ‘The various boards whose united action is by law intended to effect a uniform assessment on all classes of property are to be regarded as one tribunal, and the whole assessment on all classes of property is to be regarded

as one judgment. If any board which is an essential part of the taxing system intentionally, and therefore fraudulently, violates the law, by uniformly undervaluing certain classes of property, the assessment by other boards of other classes of property at the full value, though a literal compliance with the law, *makes the whole assessment, considered as one judgment, a fraud upon the fully-assessed property. And this is true although the particular board assessing the complainant's property may have been wholly free from fault or fraud or intentional discrimination.*" (Italics added.) (244 U. S. 518.)

The ruling of the Supreme Court of Tennessee is in direct conflict with the quoted ruling of this Court.

The opinion of the Supreme Court of Tennessee contains the further statement:

"It is argued that property generally, throughout the state, is assessed for taxation at less than cash value, and that the court should take judicial knowledge of such underassessment. Whatever may have been the practice in this regard in former times, it is our belief that since 1930 assessments generally are and have been higher than the actual cash value of the property assessed."

Appendix, pp. 81-82; R. 133.

This is an expression of opinion of the members of the court as individuals. It does not purport to be responsive to any evidence in the record. It was made, as the context indicates, only in response to petitioner's argument that the Court should take judicial notice of the *system* of underassessment now as in *Wray v. Railroad*, 113 Tenn. 544, 560, and was not intended to interpose the personal belief of the members of the Court against the proof of underassessment contained in the record. The local tax assessor, said that court in *Treadwell Realty Company v. Memphis*, 173 Tenn. 168, 175, "is the man presumably most familiar with the

values of property" in his community. The interposition of the personal opinion of a judge, with respect to an issue with which he cannot be presumed to be familiar, to offset the undisputed testimony of witnesses so qualified, would indicate bias amounting to a denial of due process of law, and the court's statement, with its context, should not be so construed.

The rights under the Federal Constitution having been especially set up and claimed in the State court, it is the province of this Court to inquire not merely whether they were denied in express terms but also whether they were denied in substance and effect, and neither the findings of fact nor conclusions of the State court control the decision of this Court on the merits of the asserted claim.

Adam v. Saenger, 303 U. S. 59, 64;

Norris v. Alabama, 294 U. S. 587, 589-590;

Sterling v. Constantin, 287 U. S. 378, 398.

The assessment under review purports on its face to fix for assessment the actual cash value of the property (R. 33-38). The statute so requires. Tennessee Code, Sees. 1526-1535. The method of assessment, by valuation of a system of railroad extending through four States, with an allocation to Tennessee of a portion of such value, precludes any method other than assessment according to actual value. It has not been contended by the State in this litigation that the assessment was not made on the basis of actual value, and the opinion of the Supreme Court of Tennessee treats the assessment as having been made at actual cash value. The only evidence to the contrary is that the assessment is at a sum grossly in excess of the actual cash value of the property.

That the assessment of petitioner's property for taxation at actual value, while the property of citizens generally is intentionally and systematically assessed for the same tax

at values substantially less than actual cash value, when the Constitution of the State permits no such classification of property for taxation, operates to deny to the petitioner the "equal protection of the law" and "due process of law" guaranteed to it by the Fourteenth Amendment to the Constitution of the United States, is firmly established by the decisions of this Court.

Cummings v. Merchants Natl. Bank, 101 U. S. 153;
Sioux City Bridge v. Dakota County, 260 U. S. 441-446;
Greene v. Louisville & I. R. Co., 244 U. S. 499, 516-518;
Bohler v. Calloway, 267 U. S. 479;
Cumberland Coal Co. v. Board, 284 U. S. 23;
Iowa-Des Moines Nat. Bank v. Bennett, 284 U. S. 239;
Raymond v. Chicago Union Traction Co., 207 U. S. 20.

The decision of the Supreme Court of Tennessee is not in accord with the decisions of this Court above cited. The Federal rights and immunities invoked are substantial and have been wrongfully denied by the decision below. The petitioner is entitled to the writ of certiorari, and to the judgment of this Court that the assessment under review may not be enforced in any sum in excess of two-thirds the actual value of the property as found by the assessors.

Assignment of Errors.

The Supreme Court of Tennessee, by its decisions and judgments of December 16, 1939, affirming the judgment of the Circuit Court of Davidson County, dismissing petitioner's original petition for the writs of certiorari and supersedeas to the State Board of Equalization, and of January 20, 1940, denying petitioner's application for rehearing, erred in the following particulars:

1. Petitioner's rights under the "due process of law" clause and the "equal protection of the law" clause of the Fourteenth Amendment to the Constitution of the United

States are denied by the assessment of its property for taxation for the years 1938-1939, and by the judgments giving effect thereto, because said assessment is based upon a valuation of said property made by the assessors arbitrarily, employing unreasonable and arbitrary methods not likely or calculated to produce a fair or just result, and is grossly in excess of any value shown by or reasonably deducible from any evidence presented to or considered by the assessors.

2. The assessment, based upon a valuation grossly in excess of the reasonable value of the property to be taxed, arbitrarily reached by methods not likely to produce a fair or just valuation, applied to property devoted to and employed as an agency of interstate commerce, imposes upon interstate commerce an unreasonable and discriminatory burden, in violation of the commerce clause of Article I, Section 8, of the Constitution of the United States.

3. The assessment, and the judgments giving effect thereto, deny to petitioner its right to due process of law and equal protection of the law, guaranteed to it by the Fourteenth Amendment to the Constitution of the United States, because the value of petitioner's distributable property in Tennessee was assumed by the assessors to be correctly measured by the product of the average value per mile of system property, located in four States, and the number of road miles in Tennessee, and the assessment is made at the value so arrived at, without a finding by the assessors that the property in the four States was of uniform value; said measure or test of value having been applied notwithstanding uncontradicted evidence that the property in Tennessee was of substantially less value than the system average and the finding by the assessors that the several branches and divisions of the railroad varied in value from \$3,300 per mile to \$37,200 per mile.

4. The assessment, and judgments giving effect thereto, deny to petitioner the equality in taxation required by the Constitution of Tennessee, Article 2, Sections 28 and 29, and the due process of law and equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States, in that petitioner's property in Tennessee is subjected thereby to *ad valorem* taxation at its actual cash value (and, in fact at a valuation grossly in excess of actual value), while the general mass of property in the State, and particularly in the counties wherein petitioner's property is taxed, is wilfully, intentionally and systematically assessed for the same taxation at an arbitrary percentage of actual value of which the average is not more than 66 $\frac{2}{3}$ %, and in no case exceeding 75 per cent.

5. The decision of the Supreme Court of Tennessee, in permitting the unconstitutional discrimination in taxation made the basis of paragraph 4 above, ruled in direct conflict with the decisions of the Supreme Court of the United States, in the following paragraph of its opinion:

"If the county assessors and the few members of county boards of equalizers making affidavits on the hearing before the Commission assessed property at less than actual value, and did so intentionally and systematically, there is no showing whatever that the members of the State Board of Equalization violated their oath of office by underassessing property. In the absence of a contrary showing, it must be assumed that the State Board did their duty. There is neither allegation nor proof that the State Board intentionally and systematically refused to equalize assessments at actual value. The good faith of such officers and the validity of their actions are presumed. *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350, 62 L. Ed. 1154. In order to support a claim of discrimination under the equal protection clause of the Fourteenth Amendment there must be something that amounts to an intention

or the equivalent of fraudulent purpose to disregard the fundamental principle of uniformity."

(R. 131-132; Appendix, p. 80.)

Prayer.

Premises considered, your petitioner, The Nashville, Chattanooga & St. Louis Railway, respectfully prays that the writ of certiorari be issued out of and under the seal of this Court, directed to the Supreme Court of Tennessee, at Nashville, Tennessee, the highest court of that State, commanding that said court certify and send to this Court for its review and determination on a day certain to be therein named a full and complete transcript of the record and all proceedings in the case filed and had under the name and style The Nashville, Chattanooga & St. Louis Railway, plaintiff-in-error v. Gordon Browning, et al., defendants-in-error, at the December term, 1938, and at the December term, 1939 of said court; the said case having been filed in said court on the appeals in the nature of a writ of error of both parties thereto, from the Circuit Court of Davidson County, Tennessee; and petitioner prays that upon consideration of said record and this petition that the judgment of the Supreme Court of Tennessee be reversed, and that judgment be entered protecting and preserving the constitutional rights of petitioner herein invoked, and that petitioner have such further and other relief in the premises as to this Court may seem proper and just.

THE NASHVILLE, CHATTANOOGA &
ST. LOUIS RAILWAY,

Petitioner,

By WM. H. SWIGGART,
EDWIN F. HUNT,
SETH M. WALKER,
W. A. MILLER,

Attorneys.

March 5, 1940.

STATE OF TENNESSEE,
Davidson County:

W. H. Swiggart, being duly sworn, makes oath that he is one of the attorneys for the petitioner herein, The Nashville, Chattanooga & St. Louis Railway; that he is familiar with the facts and proceedings stated in the foregoing petition, which he prepared, and that the same are fully and truly stated to the best of his knowledge, information and belief.

W. H. SWIGGART.

Subscribed and sworn to before me at Nashville, Davidson County, Tennessee, on this March 2nd, 1940.

W. P. SENSING,
Notary Public.

[SEAL.]

SUPPORTING BRIEF.

I.

The Petitioner is Entitled to Relief from a Grossly Excessive Assessment, Arbitrarily Made.

A. Applicable Decisions.

“The principles governing the ascertainment of value for the purposes of taxation are the same as those that control in condemnation cases, confiscation cases and generally in controversies involving the ascertainment of just compensation.”

Great Northern Ry. v. Weeks, 297 U. S. 135, 139.

“Judicial knowledge must be taken of the fact that late in 1929 there occurred a great collapse of values of all classes of property—railroads, other utilities, commodities and securities, and that the depression then commenced progressively became greater.”

Great Northern Ry. v. Weeks, 297 U. S. 135, 149.

It is the duty of the Court to determine the merits of the taxpayer's claim “that the assessment of his property was arbitrarily made and is grossly excessive.” Upon showing that “the methods or system” by which the assessment under review was made were “plainly calculated to produce a grossly excessive assessment,” the taxpayer is entitled to relief, notwithstanding his submission to over-taxation in previous years.

Great Northern Ry. v. Weeks, 297 U. S. 135, 151-152.

“In cases such as this, courts are not permitted to weigh evidence of value. They may not substitute their opinions for the findings of assessing officers or boards. But when the jurisdiction of the district court is appropriately invoked, it is its duty to decide upon the merits of the taxpayer's claim that the assessment of his property was arbitrarily made and is grossly excessive.”

Great Northern Ry. v. Weeks, 297 U. S. 135, 151;
Bailey v. Megan, (Eighth Circuit) 102 F. (2d) 651.

“The value of the physical elements of a railroad—whether that value be deemed actual cost, cost of reproduction new, cost of reproduction less depreciation or some other figure—is not the sole measure of or guide to its value in operation. *Smyth v. Ames*, 169 U. S. 466, 547. Much weight is to be given to present and prospective earning capacity at rates that are reasonable, having regard to traffic available and competitive and other conditions prevailing in the territory served. No intangible element of substantial amount over and above the value of its physical parts inheres in a railroad that cannot earn a reasonable rate of return on its bare-bones—as the mere tangible elements properly may be called. See *Omaha v. Omaha Water Co.*, 218 U. S. 180, 202.”

Southern Ry. v. Kentucky, 274 U. S. 76, 81-82.

“The rule of property taxation is that the value of the property is the basis of taxation. It does not mean a tax upon the earnings which the property makes, nor for the privilege of using the property, but rests solely upon the value. But the value of property results from the use to which it is put and varies with the profitability of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use. The amount and profitable character of such use determines the value, and if property is taxed at its actual cash value it is taxed upon something which is created by the uses to which it is put.”

Cleveland, C., C. & St. L. Ry. v. Backus, 154 U. S. 439, 445;

Franklin County v. Railroad, 80 Tenn. 521, 539.

“It must be the present and potential ability of this property to earn in competition with other existing forms of transportation which is determinative of its value. An estimate of value in excess of the amount

upon which, it can honestly be believed, the property is capable of earning an acceptable rate of return, cannot be sustained. Compare *Great Northern Railway Co. v. Weeks*, *supra*, 297 U. S. page 151, 56 S. Ct. 426, 80 L. Ed. 532.

"A computation of system value based upon average market price of stocks and bonds and a computation based upon a capitalization of net earnings reflect the effect, upon actual value, of obsolescence, of the competition of other means of transportation, and of all factors affecting earnings, but original cost and cost of reproduction do not reflect adverse economic factors, whether temporary or permanent."

Bailey v. Megan, (Eighth Circuit), 102 F. (2d) 651, 655.

"In determining the value of the property of a railway company for the purposes of taxation, several classes of evidence are admissible; but the net earnings of the property and the market value of its stocks and bonds for a reasonable period antecedent to the making of the assessment constitute the most reliable and influential evidence of that value."

Chicago & N. W. Ry. Co. v. Evland, (Eighth Circuit), 13 F. (2d) 442, 443.

"It is clear that if the assessments made by the taxing authorities were so grossly excessive as to be unreasonable, and were arrived at by the adoption of fundamentally wrong principles, they were not final and a Federal court of equity has power to grant relief because taxation based upon such valuations deprives the Company of its property and denies it the equal protection of the law. * * *"

City of Detroit v. Detroit & Canada Tunnel Co. (Sixth Circuit), 92 F. (2d) 833, 836.

"There is no doubt that neither the net revenue of an operated railroad, nor the current market value of its stocks and bonds, nor any other class of competent evi-

dence is the sole criterion by which the value of railroad property for purposes of taxation must be determined. But there are some classes of evidence upon this subject that under the established rules of law and evidence and in reason are entitled to far greater influence in determining such value than others. After a thoughtful reading and deliberate consideration of all the evidence regarding the fair value of the property of the plaintiff in South Dakota assessable by the defendant tax commission in the light of the established rules of law and evidence, to which reference has now been made, we are unable to resist the conclusion that the tax commission of South Dakota and the court below in their consideration of that evidence and in their finding of the value of the property of the plaintiff in South Dakota *fell into a decisive error of law in that they failed to give to the fact that the plaintiff derived no substantial net earnings from this property in South Dakota in 1921, or in any of the four previous years, and to the market value of the stocks and bonds of the plaintiff, the decisive influence in determining the value of the property under consideration to which they were entitled.*" (Italics added.)

Chicago & N. W. Ry. Co. v. Evland, (Eighth Circuit) 13 F. (2d) 442, 448.

Exaction of a State property tax measured by an excessive assessment of the property of an interstate railroad constitutes a discriminatory and direct burden on interstate commerce, contrary to and prohibited by Article 1, section 8, of the Constitution of the United States.

Western Livestock v. Bureau of Revenue, 303 U. S. 250;

Raymond v. Chicago Traction Company, 207 U. S. 20, 35-36.

"The assessable value for taxation of a railroad track can only be determined by looking to the elements on which the financial condition of the company de-

pend, its traffic as evidenced by the rolling stock and gross earnings in connection with its capital stock."⁷

Franklin County v. Railroad, 80 Tenn. 521, 539;

Railroad v. State, 55 Tenn. 663, 800.

The test of value for assessment in Tennessee is expressly defined by statute as "the amount of money the property would sell for, if sold at a fair voluntary sale." Code of Tennessee, section 1349; Appendix, p. 65.

B. *The Evidence.*

1. The assessment was made by first placing a value upon the property as a whole and then breaking it down. Statement of Mr. Dunlap, Chairman of Railroad and Public Utilities Commission, (R. 155-156).⁸

Exhibit No. 4 to the testimony of L. E. McKeand sets forth the income produced by every class of property of petitioner, excepting only income from tax-exempt securities, for seven years (R. 308). Income from non-operating property is included because the assessors placed an overall valuation on both operating and non-operating property. The composition of the exhibit is explained by Mr. McKeand, petitioner's chief accounting officer, at (R. 297-298).

Capitalization of the seven-year average income (before fixed charges) at six per cent would product a system value of \$16,021,298, to be compared with the \$23,996,604 found by the assessors.

The 1937 income was less than the seven-year average, producing a capitalized system value of only \$15,127,588.

Operation of the property for seven years, 1931-1937 inclusive, failed to meet the fixed charges, interest on bonds

⁷ "Gross Earnings," in the above quotation, obviously means gross income, before fixed charges and dividends are paid, and not gross revenue.

⁸ The statement of the Chairman at this point that the tax return does not show revenues for the State demonstrates an unfamiliarity with the record on which the assessment was made. See original tax return, pp. 18, 20, 21.

and rent of leased road, by an annual average of \$553,537.73; producing an aggregate operating deficit for the period of \$3,874,750 (R. 308).

The ratio of petitioner's fixed charges to operating revenues is nearly one-third less than the national average for all Class I Railroads. (Evidence, McKeand and Exhibit No. 7, R. 300, 311.)

The Railroad Commission gave little or no weight to the average income produced by the property as evidence of its value. See statements of Commissioner Jourdonmon, (R. 178-179).

Seventy-three per cent of the capital stock of the petitioner is owned by the Louisville and Nashville Railroad Company, favorably affecting the market price of petitioner's capital stock and bonds. Ex., Fitzgerald Hall, (R. 224).

137 miles of the system main track, between Chattanooga, Tennessee, and Atlanta, Georgia, are leased from the State of Georgia, by a fifty-year lease made in 1917. No securities are outstanding against this mileage. Ex., McKeand, (R. 300-301).

230 miles of main track, operated by petitioner under a 99-year lease from the Louisville and Nashville Railroad Company, are bonded for \$4,619,000. These bonds are general obligations of the Louisville and Nashville Railroad Company, and their market value reflects the financial condition of that Company rather than the value of the leased lines. Ex., McKeand, (R. 301).

A very small part of petitioner's capital stock is subject to purchase and sale, and in 1937 the total number of shares bought and sold was only 4.38 per cent of the total. Only 3.09 per cent of petitioner's outstanding bonds were traded in during 1937. Exhibit No. 37 to Ex. Fitzgerald Hall, (R. 240). Mr. Hall testified: "The very small percentage of

outstanding securities purchased by the public during the seven-year period since 1931 indicates that purchases have been induced largely by the hope of speculative re-sale profit? (R. 224).

Two of the important traffic centers reached by petitioner's system are Memphis, Tennessee and Atlanta, Georgia. Both are reached by the leased lines. It is impossible to ascertain or estimate how much of the actual value of petitioner's owned lines, reflected in the market price of its stocks and bonds, is derived from and dependent upon the leasehold interest in the leased lines.

On the assessment date, January 10, 1938, the aggregate market value of the capital stock and all outstanding securities issued by petitioner was \$16,312,000. Non-taxable securities owned by petitioner had a value of \$2,081,774,⁹ leaving a balance of \$14,230,226, representing the value of taxable property as indicated by the market value of the stocks and bonds. Original tax return filed with printed record, pp. 16-17.

The average market value of petitioner's securities, with non-taxable values deducted, for seven months of 1938 was only \$12,532,274. For the seven-year period, 1931-1937 inclusive, this average was \$21,609,690.¹⁰ Exhibit No. 51 to Ex. Fitzgerald Hall (R. 254).

Combination of the two measures of value in accord with established methods approved by this Court in *Great Northern Ry. v. Weeks*, 297 U. S. 135, and in *Rowley v. Chicago & N. W. Ry.*, 293 U. S. 102, produces the following result:

⁹ (Note—Tennessee taxes the income from all interest-bearing evidences of debt, including corporate dividends, in lieu of the *ad valorem* tax on stocks and bonds. Public Acts, 1931, 2nd Extra Session, chapter. 20; Williams Code of 1932, Sections 1123.1-1123.34. *Hamilton Nat'l Bank v. Slipp*, 160 Tenn. 311, 315.

¹⁰ Includes \$840,000 equipment trust bonds, issued 1937, added at par to stock and bond total. Tax Return, p. 14.

Value of Stocks and Bonds, 7-year average	\$21,609,690
Capitalization of Earnings, 7-year average	16,021,298

Total of two measures of value	37,630,988
Average of two measures of value	18,815,494

The value so shown is five million dollars less than the system value fixed by the assessment. The valuation made by the assessors is therefore more than one-fourth greater than the maximum value upon which "it can honestly be believed the property is capable of earning an acceptable rate of return," in excess of which a valuation for taxation "cannot be sustained." *Bailey v. Megan* (C. C. A. 8th Circuit), 102 F. (2d) 651, 655.

2. Evidence of the permanent destruction of former values in petitioner's system of railroad demonstrates the error of the assessors in using former assessments as a basis for the present assessments. See statements of Commissioner Jourohmon (R. 179); opinion of Board of Equalization (R. 101, App., 69).

The statement of the Commission's spokesman in argument to the Board of Equalization that the assessment of 1936 was agreed to is not supported by the record, and was so noted in the dissenting opinion of Mr. Justice McKinney (App., 87).

Acquiescence in previous overassessments is not material to a present claim of gross excess. *Great Northern Ry v. Weeks*, 297 U. S. 135, 152.¹¹

¹¹National Tax Association Proceedings (1938) quote Mr. George W. Mitchell, Director of Research of the Illinois Tax Commission, as saying:

"It has therefore been increasingly necessary for railroads to establish lower values for their properties in terms of the factors recognized by statutes and decisions of State and Federal courts. More than ever both railroads and assessors look upon assessments as dependent upon factual considerations. It is incumbent upon the railroads today to prove their case in conclusive terms before they can obtain any consideration from assessment officials. The declining railroad fortunes have eliminated any satisfactory solution in terms of that sacred bull, *Last Year's Assessment*,

The destructive effect on the taxable value of petitioner's railroad system of the advent and growth of competitive forms of transportation, by highway, water and air, aided by governmental subsidy, is graphically portrayed in the testimony of petitioner's president, Fitzgerald Hall, and its traffic manager, Charles Barham, to which reference is here made. Ex. Mr. Hall (R. 191); Ex. Mr. Barham (R. 255).

Exhibits Nos. 23 and 24 to Mr. Hall's testimony demonstrates that the reduction of petitioner's traffic, resulting both from economic depression and permanent revolution in public transportation, is substantially greater than the national average. (R. 233).

Failure of the railway system to earn the "fair return" approved by the Interstate Commerce Commission in any year is shown by Exhibit No. 38 to Mr. Hall's testimony (R. 241).

The exhibit map (R. 500-C), indicates the particular effect on this Railway of the Tennessee Valley Authority's navigation improvement program. Already the Railway has lost to barges gasoline tonnage producing half a million dollars a year. Exhibit No. 16 (R. 230). And the T. V. A. reports: "The signs point to heavy barge traffic in petroleum products, grain and grain products, forest products, steel, coal and coke" (R. 198).¹²

Thirty-eight per cent of the system road miles are branch lines, formerly profitable feeders to the main lines, but now reduced to loss-producing burdens, operated in the public interest. Ex. Barham (R. 259-261). This 38 per cent of

or his handmaiden the *Judgment of the Commission*. "This is not fortunate since there is scant justification for perpetuating the frequent blunders or prejudices of previous assessing agencies."

¹² Commissioner Joseph B. Eastman:

"In the old days the railroad could count, with the growth of the country upon a corresponding and rapid growth of traffic which depression might interrupt but could not check. They cannot count on such growth now, and they have a transportation machine built for a volume of production which far exceeds the present demand" (R. 205).

mileage carries only 4.4 per cent of the system ton miles and only 1.2 per cent of the system passenger miles. The traffic density of the branches is only 7.4 per cent of the main lines. Ev. McKeand (R. 296).

This high percentage of unprofitable branch line mileage renders useless any comparison of the assessment per mile of this Railway with the per mile assessment of other railroads. No other railroad in Tennessee is so situated.

The traffic of this Railway is highly competitive, making necessary the operation of freight trains on more frequent schedules, at greater speeds, and with fewer cars than the average for the nation. Ev. Barham (R. 285-288). Much of the traffic is seasonal, increasing the empty back-haul movement of cars. Ev. Mr. Barham (R. 286). This condition increases operating expense and reduced net operating income. Ev. McKeand (R. 295). Operating costs per revenue dollar are substantially greater for this Railway than the national average. Table, Exhibit No. 19 (R. 499).

Agency stations of the system in 1920 numbered 231. In 1937 only 86 remained. Ev. Mr. Hall (R. 216-217); Exhibit No. 30 (R. 236-239).

Since 1929, 127.72 miles of main track, assessed at \$54,146, have been abandoned (Ev. Mr. McKeand, Exhibit No. 6, R. 310 A; Ev. Barham, R. 261-262).

The rolling stock of the Railway is not modern. Much of it is idle and out of repair. With a book value of \$7,618,129, maintenance costs in 1937 reached \$3,481,509 (Ev. McKeand, Exhibit No. 1, R. 304). Deferred maintenance aggregates \$1,339,276 (Exhibit No. 46, R. 224). The average age of locomotives is 26 years, of passenger cars 22 years, and of freight cars 21 years. Only 20 per cent of the locomotives are under 20 years old (Ev. Fitzgerald Hall, R. 216, 220; Exhibit No. 47, R. 245-247).

The average age of the railway shop buildings is from 29 to 39 years, of freight depots in the larger cities 35

years (Exhibit No. 29, R. 235). Needed repairs have been deferred for lack of revenues (Hall, R. 219-220; Exhibit No. 46, R. 244). Eighteen bridges, more than 45 years old, are on falsework or operated under "slow orders" (Hall, Exhibit No. 50, R. 253).

Excessive governmental taxes and imposts on the use and operation of property necessarily reduce its value. Taxes paid by petitioner from each revenue dollar have increased from 2.54 cents in 1916 to 6.13 cents in 1937 (Ev. McKeand, R. 293). In seven years a tax bill of \$4,000,000 has produced a net corporate deficit of \$2,708,000 (Ev. Hall, R. 218-219). Other substantial increases in operating costs are listed by Mr. McKeand (R. 293-294).

Depletion of natural resources in the territory served by the Railway, formerly productive of large revenue, is demonstrated in Exhibit No. 48 to Mr. Hall's testimony (R. 247) *et seq.*, explaining in part the destruction of value of the branch lines (Ev. Hall, R. 220-221).

The "general balance sheet," Exhibit A to the tax return, is made up in accord with the accounting rules of the Interstate Commerce Commission. Assets are listed under the caption "Investment," and the statement purports to give only investment costs, against which no depreciation or obsolescence charge is made, except with respect to rolling stock. It is therefore no evidence of the present value of the physical property subject to assessment.

The record contains no evidence of the reproduction cost less depreciation, of the property at the date of the assessment (Ev. McKeand; R. 299-300).

The foregoing is only an outline of some of the material evidence of diminished and diminishing value of the property assessed, demonstrating that the arbitrary and inadequate methods of valuation specified in the petition for

certiorari have produced a grossly excessive and unjust assessment.

II.

Allocation of System Value to Tennessee.

A. Applicable Decisions.

Allocation of system value to a State must be "arrived at by the exercise of sound judgment based on facts that fairly reflect the relation between value of the system as a whole and value of the part within the State."

Great Northern Ry. v. Weeks, 297 U. S. 135, 144;

Rowley v. Chicago & N. W. Ry., 293 U. S. 102, 109-110;

Wallace v. Hines, 253 U. S. 66;

Union Tank Line v. Wright, 249 U. S. 275;

Fargo v. Hart, 193 U. S. 490, 500;

Pittsburgh etc. Ry. v. Backus, 154 U. S. 421;

Southern Ry. Co. v. Kentucky, 274 U. S. 76.

"So long as it fairly may be assumed that the different parts of a line are about equal in value a division by mileage is justifiable."

Fargo v. Hart, 193 U. S. 490, 500.

B. The Evidence.

The value found for the distributable property for the entire system is allocated to Tennessee on the sole basis of road mileage (Assessment, R. 37).

The valuation by the assessors of the several divisions and branches of petitioner's railroad at sums ranging from \$3,300 per mile to \$37,200 per mile, conclusively rebuts any presumption that the several parts of the system are of equal value (Assessment, R. 38).

The table of miles and values for assessment, reported by the assessors, shows on its face that only 301 miles of

the 800.02 miles of road in Tennessee are assigned a value as great as the average value per mile (\$16,158.27) found for the system (R. 38).

The values assigned by the assessors to the several divisions or branches demonstrate the excessive valuation of the parts in Tennessee. The total mileage of each division and branch is shown on the original tax return, filed with the printed record, at page 10. Application of the values reported by the assessors for each division and branch in Tennessee (R. 38) to the total mileage of each such division and branch produces an aggregate value for distributable property which exceeds the value found for the system by \$1,645,514, allowing nothing for the Rome branch of 18 miles no part of which is in Tennessee.

There is no uniformity of value in the mileage constituting the system. Thirty-eight per cent is branch line mileage, of which the tonnage density is only 7.4 per cent of the main lines. Of this unprofitable branch line mileage 74.5 per cent is in Tennessee (Ex. McKeand, R. 296).

Allocation on the sole basis of road mileage subjects 71.73 per cent of the value of the system distributable property to taxation in Tennessee. For each one per cent of value so allocated to the State the assessment is increased by \$180,221.

The investment cost of the physical properties, other than rolling stock, of the system as valued and located by the Interstate Commerce Commission (31 I. C. C. Valuation Reports, p. 567) brought to date under the Commission's supervision, without deduction for depreciation, shows only 64.41 per cent of the system property in Tennessee (Ex. McKeand, R. 295-6; Exhibit No. 5, R. 310).

The tax return allocates or assigns railway operating revenues and expenses of the system to Tennessee, in accord with a formula attached to the return. Net railway

operating income earned by the Tennessee mileage, so computed, was in 1937 only 51.5 per cent of that earned by the system. The net railway operating income per mile of track in Tennessee was less than half (41.84 per cent) the income per mile of track in other States (Ev. McKeand, R. 302-3; Exhibit No. 8, R. 308).

Exhibit No. 3 to the testimony of L. E. McKeand (filed at R. 296) is a statement of traffic and operating units of the system for 1937, divided between the Tennessee mileage and that outside Tennessee. The exhibit, at R. 307, shows the following ratios:

Tennessee proportion of system traffic units (ton miles and passenger miles)	68%
Tennessee proportion of car and locomotive miles	69.06%

The evidence showing without contradiction an absence of uniformity in the value of the system mileage, petitioner submits the following table as a reasonable test of the relative value of the system distributable property and that part in Tennessee:¹³

Tennessee's proportion of investment cost	64.11%
Tennessee's proportion of traffic units	68.00%
Tennessee's proportion of car and locomotive miles	69.06%
Tennessee's proportion of track mileage	71.73%
Tennessee's proportion of net operating income	51.50%
Average	64.05%

¹³ James W. Martin, Commissioner of Revenue for Kentucky, writing in "Tax—The Tax Magazine," March, 1939, says:

"Therefore, the theory of allocation of a unit assessment is that the allocation shall be reasonable and shall reflect the elements in the situation which have to do with the value of the lines itself. For this reason not only the cases handed down by the courts but also the literature reporting independent economic studies of the problem agree that two or more allocation factors reflecting physical property and two or more allocation factors reflecting operating experience shall be utilized in arriving at a fair

The average of these percentages is 64.05 per cent, measuring the percentage of system value assignable to Tennessee upon consideration of the several factors of mileage, cost, use, traffic and income. The result, assuming the validity of the Commission's finding of system value, compared with allocation by mileage alone is:

Allocation on mileage alone,	
71.73% of \$18,022,133	= \$12,926,944
Allocation on combined factors,	
64.05% of \$18,022,133	= \$11,543,177
	<hr/>
Excess of assessment over true value	= \$1,383,767

Whether the above formula or some other like formula be used should probably be left to the reasonable judgment of the assessors. The proof herein shows that road mileage alone does not fairly reflect the relation between value of the system and value of the part within the State of Tennessee. The assessors have not exercised the sound judgment required by the cited rulings of this Court. The allocation based on mileage alone should be adjudged to have been made arbitrarily, and the assessors required to exercise their sound judgment in arriving at a reasonable basis for the division of system value between the taxing States.

III.

Equalization in Assessment Denied to Petitioner.

A. Applicable Decisions and Statutes.

Article 2, Sections 28 and 29, of the Constitution of Tennessee provides:

allocation. There is no pretense on the part of realistic economists that the value actually allocated is the separate value in that state; it is rather simply a reasonable share of the aggregate value of the operating entity.

"* * * All property shall be taxed according to its value, that value to be ascertained in such manner as the Legislature shall direct, so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value. * * *" (Section 28.)

"The General Assembly shall have power to authorize the several counties and incorporated towns in this State, to impose taxes for county and corporation purposes respectively, in such manner as shall be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to State taxation. * * *" (Section 29.)

"The sole and manifest purpose" of the provision for taxation according to value "was to secure uniformity and equality of burden", etc.

Treadwell Realty Co. v. Memphis, 173 Tenn. 168, 174.

Sections 1526 and 1535 of the Tennessee Code of 1932 direct that the Railroad Commission and the Board of Equalization shall ascertain the "actual cash value" of property assessed by them and that "the valuation so fixed shall be assessed against said property." (Copied in dissenting opinion of Mr. Justice McKinney, App., pp. 84, 86.)

"All property of every kind shall be assessed at its actual cash value. The term, 'actual cash value', is defined to mean the amount of money the property would sell for, if sold at a fair, voluntary sale." Code of Tennessee, Section 1349. (Quoted.)

The statutes providing for assessment of railroad property by a central authority were sustained by the Tennessee Court on the theory that they require assessment on the

same principle of actual value, required by the State Constitution for the assessment of all other property.

Chattanooga v. Railroad Co., 75 Tenn. 561, 567, 569.

Knoxville v. Ft. Sanders Hospital, 148 Tenn. 699, 705-707.

It is now established as the law of the land that "where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." The assessment of the property of one or a group of taxpayers at full value, while the mass of property is intentionally and systematically assessed at less than full value, for payment of the same tax, violates the "due process of law" clause and the "equal protection of the law" clause of the Fourteenth Amendment to the Constitution of the United States, and provisions of Article 2, Sections 28 and 29, of the Constitution of Tennessee, amounting to a fraud upon the rights of the taxpayer.

Sioux City Bridge v. Dakota County, 260 U. S. 441-446;

Greene v. Louisville & Interurban R. Co., 244 U. S. 499, 516-518;

Cumberland Coal Co. v. Board, 284 U. S. 23;

Iowa-Des Moines Nat. Bank v. Bennett, 284 U. S. 239;

Raymond v. Chicago Union Traction Co., 207 U. S. 29;

Cummings v. Merchants Natl. Bank, 101 U. S. 153;

Bohler v. Calloway, 267 U. S. 479;

Taylor v. Louisville & N. R. Co., 88 Fed. 350;

Trustees of Cincinnati Sou. Ry. v. Guenther, 19 Fed. 395;

Treadwell Realty Co. v. Memphis, 173 Tenn. 168;

Mobile & Ohio R. Co. v. Schnepfer, 31 F. (2d) 587;

Washington Water Power Co. v. Kootenai (C. C. A. 1921), 270 Fed. 369;

People ex rel. v. Illinois Central R. Co. (1934), 355 Ill. 605, 190 N. E. 82;

Lively v. Missouri, K. & T. Ry. Co., 102 Tex. 545, 120 S. W. 852;

West Pennsylvania Power Co. v. Board, 112 W. Va. 442, 164 S. E. 862;

Boonville Natl. Bank v. Schlottzhauser, 317 Mo. 1298, 298 S. W. 732, 55 A. L. R. 489;

Knor v. Southern Paper Co., 143 Miss. 870, 108 So. 288, 290.

When this inequality of assessment is shown, it is immaterial that other like property of other taxpayers is subjected to the same discrimination.

Mobile & Ohio R. Co. v. Schnepfer, 31 F. (2d) 587;

Washington Water Power Co. v. Koolenai (C. C. A.), 270 Fed. 369.

Testimony of local assessors that they intentionally assessed property in their respective jurisdictions at less than its full or actual cash value is both competent and "convincing" evidence of the fact, in a suit by a taxpayer whose property is assessed by a central board or commission.

Bohler v. Calloway, 267 U. S. 479, 481;

West Penn. Power Co. v. Board, 112 W. Va. 442, 164 S. E. 862.

In Tennessee "The remedy for the alleged error of the Board of Equalizers in the correction of inequality in assessments, which it is the primary duty of such a board to equalize, as its very name imports, is 'by certiorari in a court of law.' "

King v. Bristol, 156 Tenn. 643, 646;

W. J. Savage Co. v. Knoxville, 167 Tenn. 642, 646;

State ex rel. v. Deric Portland Cement Co., 151 Tenn. 53, 59.

Opinion evidence with respect to the value of real estate is universally recognized as excepted from the general opinion evidence rule. Mr. Wigmore reports that only the States of New Hampshire and New York ever questioned this proposition, and those States are now in accord with other jurisdictions in admitting such evidence. We quote from this work on Evidence as follows:

"Our orthodox common law was not troubled with any doubts concerning value-testimony as tainted by the vice of opinion. It recognized fully that value-testimony necessarily involved 'opinion,' by which was meant a mere estimate, as distinguished from a knowing through the senses. But it also recognized that value-testimony had to be employed, and it was precisely one of the typical accepted instances (ante, Sec. 1917) in which 'opinion' was received. When the new sense of 'opinion' (as 'inference') came in (ante, Sec. 1917), and received its peculiar American development, it was then seen that the fundamentals of faith were brought thereby into the dark shadow of doubt, and that the question of the propriety of value-testimony had to be faced.

... * Why should a witness testify that the value of a piece of land was so much, when he could state its features sufficiently in detail and leave the jury to make their own inference? Fortunately, the futility of this argument was everywhere else seen; and, though the question was brought up and had to be settled in almost every other jurisdiction, it was settled in favor of receiving such testimony. This view was also afterward taken in New Hampshire (by legislation) and in New York."

Wigmore on Evidence, Vol. III, section 1940, pp. 2576-2577.

Local tax assessors are presumably the best qualified witnesses to testify with respect to the value of property within their respective jurisdictions.

Treadwell Realty Co. v. Memphis, 173 Tenn. 168, 175.

Local assessments are final, "except in so far as the same may be revised or changed by the State board of equalization." Code of Tennessee, section 1433, Appendix, p. 65.

Specific complaints, sworn to by a taxpayer, are a condition precedent to review by the State Board of Equalization of assessments made by local assessors. Code of Tennessee, section 1450, Appendix, p. 66.

Both the county board and the State Board of Equalization are prohibited from increasing any assessment made by county assessor except after notice to the owner and opportunity to be heard, with the right to introduce evidence before the State Board. Code of Tennessee, sections 1427, 1453; Appendix, pp. 65, 66.

Railroad assessments are not final until the actual cash value is fixed and certified by the State Board of Equalization. Code of Tennessee, sections 1534, 1535, 1536; Appendix, pp. 85, 86, 68.

B. The Evidence.

Assessments of real estate by county assessors are made for a biennium in the odd years; by the Railroad Commission in the even years. Tennessee Code, Secs. 1348, 1458. Taxes for 1938 were therefore levied on assessments completed in 1937 by the county assessors, while the 1938 assessment of railroads was not completed until the fall of 1938 (R. 89).

The evidence of the intentional underassessment of the general mass of property for 1938 taxation was taken in 1938 and refers to assessments completed in 1937.

No objection was made to the form, competency or materiality of any of the evidence in the record at any time.

In 1894 the attention of the Tennessee Legislature was directed to the practice then followed of assessing property at approximately one-half actual value (R. 324).

In 1915 a commission appointed by the Governor reported, after investigation, an established custom of assessments at ratios from 25 to 60 per cent of actual value. "In no case," the report states, "did any assessor state that the tax aggregate constituted more than 60 per cent of the value" (R. 325).

In 1920 "all property was revalued for tax purposes." Since 1920 the aggregate assessment of farm property has been decreased 49 per cent; the aggregate of all assessments made locally 28 per cent; while the aggregate of assessments made by the Railroad and Public Utilities Commission has decreased only 7 per cent (Ex. Ponder, R. 336-337).

The present assessment of petitioner's property is greater by 5 per cent than its assessment in 1920, notwithstanding the abandonment of more than 100 miles of main track in Tennessee (R. 327; Exhibit No. 6 to Ex. of McKeand, R. 310-A).

Continuance of the systematic and intentional underassessment of property by county tax assessors to and including the assessment of 1937, throughout the State, as an applied principle of assessment, is shown by the affidavits and reports of officers of the Tennessee Taxpayers Association, W. R. Ponder and W. P. Brooks, both of whom made oath to the verity of the reports exhibited by them. The investigation was made in the public interest and not for the purposes of this litigation. Mr. Brooks, in making the investigation, "visited and personally contacted the officials of each county and each city and town in the State of Tennessee" (R. 344). The reported estimates of the

ratio of assessed value to actual value, in his opinion, "represent the best information available on the subject" (R. 344).

Reference is specifically made to the entire testimony of Messrs. Pouder and Brooks, for the careful and impartial method by which their investigation and reports were made (Ex. Pouder, R. 333-340; Ex. Brooks, R. 343-344).

The ratio of assessments to actual value of the property in each county of Tennessee is given in Exhibit A to Mr. Pouder's testimony (R. 341-342). In no county is the assessed value in excess of 75 per cent of the estimated actual value (Affidavit, R. 338; Exhibit A, R. 341-342).

A second affidavit of Mr. Pouder, filed with the Board of Equalization (R. 448), verifies a later tabulation of assessments and actual values in each county and incorporated city and town of the State; compiled in the same manner as set out in his original affidavit. This table shows that in no county, city or town does the assessed value in 1937¹¹ of property exceed seventy-five per cent of the estimated actual value; the average assessment rate for the counties being 60.8 per cent of the estimated actual value (R. 453) and for the cities 66.4 per cent (R. 459). Second affidavit Pouder, (R. 448); Tabulation (R. 450-459).

The investigation and reports of the Tennessee Taxpayers Association, through Messrs. Pouder and Brooks, are accepted as the basis of values of county and municipal securities by dealers and their customers, and their reports comparing assessed values and actual values, although widely used and distributed, have not been questioned. That assessments in Tennessee will not average more than 66 per cent of actual values "is a matter of common knowledge throughout the state." Ex. T. H. Mitchell (R. 345-346).

¹¹ The 1937 assessment of real estate was made for the biennium, 1937-1938. Code of Tennessee, Section 1348, Appendix, p. 65.

In support of the evidence of long continued custom and practice of underassessment above recounted, petitioner filed specific proof of adherence to the custom in twenty-seven of the thirty-one counties in which its property is located and taxed.

In Bedford County petitioner returned for assessment property valued at \$548,430. Original tax return, pp. 24, 56. The county tax assessor, John S. Hart, testified that his predecessor in office assessed property "at approximately fifty (50%) per cent of its actual, or sale value." His statement continues:

"* * * and during the tenure of office of this affiant, the assessments have remained the same, and have been made by affiant at approximately fifty (50%) per cent of the actual, or sale value of the property, with the exception of some few changes made by the County Equalization Board, with the general trend of such changes by such Board toward a decreased assessment, rather than an increased assessment in taxation" (R. 348).

In Franklin County petitioner's tax return shows property valued by it at \$1,067,035. Original tax return, pp. 24, 60. The county tax assessor testified herein: "that in all of his assessments he has adopted a basis of approximately sixty (60) per cent of the actual or sale value of the property in making his assessments" (R. 380). The chairman of the county board of equalization testified that the board had "adhered to said percentage as nearly as possible in all cases" (R. 380-381).

The proof of intentional underassessment of property in Franklin and Bedford counties is typical of the proof of like assessments in the other counties, now briefly cited and referred to.

Benton County. Assessments at 50 to 60 per cent of actual value. Thirty-two parcels of land sold in 1937-1938, selected

at random from deed book, assessed at 54 per cent of recited sale price. Further testimony by county trustee and real estate agent (R. 353-357).

Carroll County. Assessments at 60 to 75 per cent of actual value. Testimony by tax assessor, county judge, county court clerk, farm land appraiser, and real estate agent (R. 358-362).

Cheatham County. Assessments two-thirds to three-fourths actual value. Testimony by three members county board of equalization and secretary of county farm loan association (R. 362-365).

Coffee County. Assessments at 65 per cent of actual value. Testimony by tax assessor, county trustee, and members county board of equalization (R. 366-369).

Dickson County. Assessments at 50 to 60 per cent of actual value. Testimony by county trustee, county judge, county court clerk and others (R. 370-373).

Fayette County. Assessments at $66\frac{2}{3}$ to 75 per cent of actual value. Testimony by tax assessor, members of county board of equalization, and bank president (R. 374-378).

Grundy County. Assessments at 60 per cent of actual value. Testimony by tax assessor and county judge (R. 382-383).

Hamilton County. Assessments at 60 per cent of estimated actual value, shown by statement of county judge (R. 383).

Hardeman County. Assessments at 65 to 75 per cent of actual value. Testimony by member county board of equalization, bank cashier, county trustee and others (R. 384-387).

Haywood County. Assessments at 50 to 60 per cent of actual value. Testimony by county tax assessor, county trustee, members of county board of equalization, bank president and mayor of county seat town (R. 388-392).

Henderson County. Assessments at $66\frac{2}{3}$ per cent of actual value. Testimony by county tax assessor and two members of county board of equalization (R. 393-395).

Henry County. Assessments at 50 to 75 per cent of actual value; average of 60 per cent. Testimony by county tax assessor, county trustee and chairman of county board of equalization (R. 396-398).

Humphreys County. Assessments at $66\frac{2}{3}$ per cent of actual value. Testimony by county tax assessor and three members of county board of equalization (R. 399-401).

Hickman County. Assessments at 65 per cent of actual value. Testimony by county tax assessor, county trustee, and bank cashier (R. 402-405).

Lewis County. Assessments of real estate at 75 per cent of actual value. *No personal property assessed except that of two banks and a mining company.* Testimony of county tax assessor, chairman of board of equalization, county trustee and others (R. 406-414).

Lincoln County. Assessments at $66\frac{2}{3}$ per cent of actual value. Testimony by tax assessor, chairman board of equalization, county trustee, and others (R. 415-417).

Madison County. Assessments at 65 to 75 per cent of actual value. Testimony by chairman and members board of equalization, deputy tax assessor, county trustee, city attorney, and bank president (R. 418-424).

Marion County. Assessments at 70 per cent of actual value. Testimony by four members of board of equalization (R. 425-427).

Marshall County. Assessments at 60 per cent of actual value. Testimony by county tax assessor, county judge, county trustee, and real estate agent (R. 428-429).

Maury County. Assessments at not exceeding 60 per cent of actual value. Testimony by two members board of equalization, bank officers and real estate agents (R. 430-434).

Obion County. Assessments at "approximately 65 per cent of actual value." Testimony by deputy tax assessor, county trustee, county judge and county court clerk (R. 435-436).

Rutherford County. Assessments at 60 to 65 per cent of actual value. Testimony by county tax assessor, secretary of board of equalization, and county trustee (R. 437-440).

Warren County. Assessments at 70 per cent of actual value. Testimony by county tax assessor, three members board of equalization, county judge and county trustee (R. 441-443).

Weakley County. Assessments at 70 to 75 per cent of actual value. Testimony by county tax assessor and bank vice-president (R. 444-445).

White County. Assessments at from 50 to 75 per cent of actual value. Testimony by county tax assessor and county trustee (R. 446-447).

These several county officers and citizens, representing all but four of the counties in which petitioner's property is located and taxed, have testified against their own interest in this proceeding.¹⁵ There is no evidence to the contrary.

The evidence establishes a universal, accepted and systematic plan and scheme of intentional underassessment by county tax assessors. The action of the State Board of Equalization herein in declining to give effect to the uncontradicted evidence by reducing petitioner's assessment to at most 75 per cent of the value placed upon it, evinces a willful intent to disregard the constitutional requirement of equality equivalent to fraud in law. *Greene v. Louisville & I. R. Co.*, 244 U. S. 499, 518; *Sioux City Bridge v. Dakota County*, 260 U. S. 441; *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239.

There is nothing to indicate that any assessment made by local assessors for 1938 taxation was reviewed by the State Board of Equalization on complaint of underassessment. Action by that Board was not required, except on sworn

¹⁵ The four omitted counties contain a small percentage of petitioner's road mileage, and are included in the investigation and testimony of Messrs. Poulder and Brooks, cited above.

complaint of a specified assessment. Tennessee Code, sec. 1453, copied in appendix at p. 66. The Board, in its opinion (App. p. 68) herein, made no claim that it had taken any action with respect to assessments made locally. A board composed of state political officers, which certifies that its members did not have adequate time to even investigate a single case (Appendix, p. 69) cannot be presumed to have given notice and heard evidence of the value of all property in the State shown herein to have been intentionally under-assessed. The petitioner had no standing to then complain for its assessment was not made until a year later. The Board clearly disclaimed notice of such underassessment of other property by its insubstantial criticism of petitioner's proof (App. p. 70). The ruling of the State Supreme Court that participation by the State Board of Equalization in the intentional underassessment of other property, while fixing petitioner's assessment at full value, was essential to the judicial relief of petitioner from the resulting unconstitutional discrimination, is a substantial denial of the "due process of law" and "equal protection of the law" guaranteed by the Fourteenth Amendment to the Federal Constitution, in direct conflict with the cited rulings of this Court.

Respectfully submitted,

THE NASHVILLE, CHATTANOOGA
& ST. LOUIS RAILWAY,

By WM. H. SWIGGART,

SETH M. WALKER,

EDWIN F. HUNT,

W. A. MILLER,

Attorneys for Petitioner.

March, 1940.

APPENDIX.

1. Code of Tennessee. Sections Cited.

Section 1336.

1336. County tax assessors; election; term.—At the regular August election, 1932, and every four years thereafter, there shall be elected by the qualified voters of each county, one tax assessor for the whole county, who shall hold his office for four years from the first day of September following. (1907, ch. 602, sec. 9, subsecs. 1 and 3.)

Section 1348.

1348. Assessments made, how often.—In order to provide revenue for state, county, and municipal purposes, personal property, privileges, and polls shall be assessed annually, and real estate shall be assessed every two years, in the odd years. (1907, ch. 602, sec. 3; 1921, ch. 62, sec. 1.)

Section 1349.

1349. Assessment at "actual cash value," which is defined.—All property of every kind shall be assessed at its actual cash value. The term "actual cash value," is defined to mean the amount of money the property would sell for, if sold at a fair, voluntary sale. (1907, ch. 602, sec. 4.)

Section 1427.

1427. Notice to property owner when assessment is increased.—No assessment shall be increased by the county board of equalizers until the property owner or owners affected by said increase shall have been notified and given an opportunity to be heard. (1907, ch. 602, sec. 32.)

Section 1433.

1433. Board's action is final, except revision or change by state board.—When the county board of equalizers shall have determined the matter of equalization and values before it and within its jurisdiction, such action shall be final, except in so far as the same may be revised or changed by the state board of equalization. (1907, ch. 602, sec. 32.)

Section 1450.

1450. Taxpayers may complain of inadequacy and inequality of assessments, how and when.—Any taxpayer, or any owner of property subject to taxation in the state, shall have the right to a hearing and determination of any complaint he may make on the ground that other property than his own has been assessed at less than the actual cash value thereof, or at a less percentage of value than his own property or other property or that his own property has been assessed at more than its actual cash value, but such complaint shall be specific, in writing, and sworn to and filed with said board at least ten days before the adjournment of the annual session. (1919, ch. 1, sec. 7; 1921, ch. 113, sec. 9.)

Section 1453 (State Board of Equalization).

1453. May reassess after county board has acted; notice to property owner; no increase without the required notice; certificate to county court clerk.—Whenever said State board, after a county board has acted, has reason to believe that an assessment of real estate or personal property is inadequate, it shall have power to cause ten days' written notice to be served on the person to whom the property is assessed, commanding such person to appear before said board at the time and place to be fixed in said notice, to show cause why said assessment should not be increased. Said taxpayer shall be entitled to be heard by himself or counsel and shall have the privilege of introducing any competent evidence touching the question of adequacy of said assessment. Whereupon said board shall determine the amount, if any, said assessment shall be increased, and reduce its judgment to writing and certify its findings to the proper county court clerk. Said state board shall not have the authority to increase a single assessment without giving the notice herein required. (1921, ch. 113, sec. 11; 1919, ch. 1, sec. 8.)

Section 1523.

1523. Additional information and evidence as to values; evidence in writing; owner may submit evidence; records

open to inspection of owners.—The commission shall require in addition to the schedules and statements above referred to, such additional information, and take such additional evidence as to the value of any property to be assessed by them as may be deemed proper, but such additional evidence shall be reduced to writing and opportunity afforded, if desired, to the owner to submit additional evidence or counter-evidence to that required by said commission, and the records of the said commission shall at all times be open to inspection of the owner or owners of any property assessable under the provisions of this statute. (1919, ch. 3, sec. 3.)

Section 1509.

1509. Owners to file sworn schedules and statements of certain information.—It shall be the duty of the owners of property mentioned in the preceding section, within the State, to file with the commission on or before the first day of April, biennially, in the even years, under oath, schedules and statements giving the following information; concerning all properties owned or leased by such owners: (1) the name of the company, its nature, whether a person, association, copartnership, corporation or syndicate, and under the laws of what state or country organized; (2) the location of its principal place of business, the post office address of the president, general manager, or executive officer or officers; (3) the name and post office address of the chief officer or managing agent of the company in Tennessee; (4) the gross receipts of its business as a whole and also of its business done within the State, and operating expenses for the preceding fiscal year; (5) the total capital stock, number of shares issued or outstanding, the par face value thereof, and in case no shares of stock are issued, in what manner its capital is divided, and its holdings evidenced; (6) the market value of said shares of stock or capital on the 10th day of January next preceding, or if said stock or capital have no market value, then the actual value; (7) the real estate, buildings, machinery, fixtures, appliances and personal property owned by said company which is actually located within this state, the actual value

thereof and the counties or municipalities in which the same are located; (8) real estate, together with the permanent improvements thereon, situated outside of the State and not directly used in the conduct of the business within the State, the purpose for which it is used, its value and the sum at which it is assessed for taxation in the locality where situated; (9) the bonded indebtedness and the market value thereof, if it has such, otherwise its actual value. (1919, ch. 3, sec. 2; 1919, ch. 166, sec. 2.)

Section 1526 (Copied in dissenting opinion, herein p. 84)

Section 1533 (Copied in dissenting opinion, herein p. 85)

Section 1534 (Copied in dissenting opinion, herein p. 85-86)

Section 1535 (Copied in dissenting opinion, herein p. 86)

Section 1536.

1536. Amount of state, county, and municipal taxes to be fixed and certified.—As soon as the commission shall have received said valuations from the board of equalization, the commission shall ascertain the amount of State tax on the assessment and file with the comptroller a statement showing the amount of State tax to be collected from each, and the comptroller shall notify the owner of same by letter or otherwise, and the commission shall certify to the county court clerk of each county in which any of such property lies the amount to be taxed in said counties, respectively, for county purposes; and likewise to the mayor of any incorporated city or town the amount to be taxed by such city or town. (1919, ch. 3, sec. 12; 1921, ch. 39.)

2. Opinion of State Board of Equalization.

From Record, pp. 100-102.

N. C. & ST. L. RAILROAD COMPANY.

APPEAL.

This appeal from the assessments made by the Public Utilities Commission, of the properties of the Company.

located in Tennessee, was heard by the State Board of Equalization, upon the record as presented to said Commission, the exceptions filed to its assessment, additional affidavits, charts and reports of company official, argument of counsel and of representative of the Commission, and the entire record, and it is now before us for determination.

This appeal presents to the Board a difficult problem. Each member is ex officio. Therefore, adequate time is not ours to give the necessary investigation to entirely satisfy even ourselves, that we may reach an equitable conclusion. However, the responsibility is ours and we would not shirk it.

The exceptions filed are many, and are based upon every method known to the law, touching the valuation and assessment of railroad property, as well as the method used by the Commission, in fixing the assessment.

The assessment made by the Commission, for the years 1938-39 is \$16,223,194.00 of Companies property or \$276,804.00 less than the assessment made for the previous years of 1936-37, and from such former assessment the Company has appealed. The records of the Commission further disclose, that previous assessment of companies property, over a period of ten years follow:

1923-1924	\$24,000,000.00
1925-1926	24,795,303.00
1927-1928	24,795,303.00
1929-1930	26,000,000.00
1931-	23,750,000.00
1932-1933	17,000,000.00
1934-1935	16,999,966.00;

the record before us shows that the Company agreed to the assessment made for the years 1936-1937. It will be seen, that the assessment made for the year of 1938-1939, is a substantial reduction from the high of 1929-1930, indeed, a reduction in the sum of \$9,776,806.00. We are convinced that this reduction of companies assessment from the high point in recent years, is comparable with the reduction enjoyed by owners of other property, or any class of property, within the bounds of this State.

The Company objects to the method used by the Commission in reaching the valuation of its property. It appears in the record, and it was stated in argument, that the Commission, in reaching its conclusion, looked to the capital stock, corporate property franchises and gross receipts, the market value of the shares of stock and bonded indebtedness, and all evidence as afforded by the returns, statements and schedules made by the company. We assume that their statements are true, and we understand that these elements must be used, as a matter of law, in making such assessments.

Another objection is raised by the Company. That is, the governmental units throughout the State assess other property at less than its actual cash value, while in the same jurisdiction, the Commission assessed its property at its actual cash value, thereby violating the Constitution, on the subject of taxation. The affidavits of William H. Ponder, who is Executive Secretary of the Tennessee Taxpayers Association, and who has compiled a great deal of data of actual cash values, and assessed values of property in the various counties of the state. This information is very interesting, but we are not familiar with the method used by him in reaching his figures on actual cash value, nor do we know how the percentage of cash value was reached for assessable purpose. Many other affidavits are in the record purporting to establish that theory, but we think they are subject to the same objection as that of Mr. Ponder.

For the foregoing reasons, we are satisfied that the assessment of companies property is just and fair to it, and in line with all other like property within the State.

This assessment of companies property at \$16,223,194.00 will stand.

Neither Governor Gordon Browning nor Commissioner Walter Stokes, Jr., participated in the hearing of this appeal.

(Signed)

A. B. BROADBENT.

Keaton & Edwards concur.

3. Majority Opinion of Supreme Court of Tennessee.

From Record, pp. 123-134.

Davidson Law:

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
Plaintiff in Error,

v.

GORDON BROWNING, *et al.* (State Board of Equalization),
Defendants in Error.

OPINION.

The Nashville, Chattanooga & St. Louis Railway filed a petition for certiorari and supersedeas in the Circuit Court of Davidson County to review the action of the State Board of Equalization in fixing the value of petitioner's property for taxation. The trial judge dismissed the petition and an appeal has been taken to this court.

The Railroad and Public Utilities Commission is directed by statute (Code 1508) to assess for taxation, for state, county and municipal purposes, all of the property of every description, tangible and intangible, within the state, belonging to railroad companies and other named public utilities. It is provided that the Commission shall assess all of such property biennially, in even years, at its actual cash value as of the same date the properties of other persons are by law assessed. The owners of property assessable under the statute are required by Code 1509 to file with the Commission sworn schedules and statements of certain information.

Section 1526 of the Code is as follows:

"Upon examination of every such schedule and statement and all other evidence taken by them, the said commission shall proceed to ascertain and determine the value of said property within the state for taxation and assess the same accordingly, taking into consideration the capital stock, corporate property, franchises, and gross receipts, the market value of the shares of stock and bonded indebtedness, and such other evidence

as is afforded by said statements and schedules or other evidence taken to enable them to fairly and equitably fix the actual cash value of the properties of such persons."

The railway filed its return with the Commission, and after considering the same, together with other evidence, the Board fixed the cash value of the railway's property in Tennessee, for taxation, at \$16,223,199.00, for the biennium 1938-39. The railway filed numerous exceptions to the assessment, which were denied after a full hearing, and the railway prayed and was granted an appeal to the State Board of Equalization. The statute (Code 1533) provides that the Commission shall file with the Board the assessments made by them, together with such records as may be deemed necessary. Section 1534 provides that the Board shall proceed to examine the assessments so made, and are authorized to increase or diminish the valuation placed upon any property valued by the Commission, and are further authorized to request of the Commission additional evidence touching the property assessed; that if the Board so desire, they have the power, without referring any assessment to the Commission, themselves to employ experts, accountants, and to call witnesses to testify upon any assessment certified to them by the Commission, and to call upon the Interstate Commerce Commission for any valuation of property in the office of such Commission; that the assessments shall not be deemed complete until corrected and approved by the Board. Under Code section 1535, the Board is required to certify to the Commission the valuation fixed by them upon each property assessed, and the action of the Board "in fixing the valuation upon such property shall be conclusive and final and the valuation so fixed shall be assessed against said property and the taxes due thereunder be paid."

The Board reviewed the assessment of the railway's property and approved the same. Before the Board certified back to the Commission the amount of the assessment, as approved, the railway filed its petition for writs of certiorari and supersedeas in the Circuit Court of Davidson County. The circuit judge, upon motion of the Board, taking into consideration the entire record as certified to the circuit court

by the Board, dismissed the petition and discharged the supersedeas. From this action of the circuit judge, the railway has appealed to this court and made numerous assignments of error. The railway in the presentation of its case, has not followed seriatim the assignments of error. As a matter of convenience we will follow the same course.

The railway complains, in the argument contained in its brief, that "The assessment is not supported by any evidence; is grossly in excess of the value of the property as established by the evidence; was made by methods not calculated to produce a fair and just result and therefore arbitrary and illegal; and was made in violation of the provisions of the statutes controlling the assessment of railroad property."

The assessment made by the Board is made final and conclusive by statute (Code 1535) and is not open to review by the courts on certiorari, where the Board has not with reference to the assessment, exceeded its jurisdiction or acted illegally or fraudulently. *Tomlinson v. Board of Equalization*, 88 Tenn., 1, 12 S. W. 414, 6 L. R. A. 207; *Anderson v. Memphis*, 167 Tenn., 648; *Treadwell Realty Co. v. City of Memphis*, 173 Tenn., 168, 116 S. W. (2d) 997. In *Savage v. City of Knoxville*, 167 Tenn., 642, it was held that value placed on property for taxation by duly constituted taxing authorities is not reviewable by the court, nothing else appearing, since value is a matter of opinion. In *Mossy Creek Bank v. Jefferson County*, 153 Tenn., 332, 284 S. W. 64, it was held that mere error in honest judgment of a county board of equalization as to value of property will not obviate binding effect of conclusion, in absence of fraud. The rule announced by the above cases is no longer open to doubt or discussion. Where, however, the Board acts illegally, fraudulently or in excess of its jurisdiction, certiorari is the proper remedy. *State ex rel. v. Dixie Portland Cement Co.*, 151 Tenn., 53, 58; *Railroad v. Bate*, 80 Tenn., 573.

The provision of the statute that the valuation made by the Board "shall be conclusive and final" presupposes a substantial compliance with the proceedings prescribed with reference to the method of making valuation of railroad property.

The Commission, as affirmatively appears from the itemized assessment made by them, considered all of the elements specified in the statutes (Code 1526). The Commission had before it the return of the railway and other evidence submitted and fixed the value of the railway's property in the sum above stated. No witness, or document in evidence, fixed the exact value as reported by the Commission; but from the facts developed, the Commission held itself able to fairly and equitably fix the actual cash value of the property. No intentional discrimination or fraud on the part of the Commission or Board is charged or proven. In *Rowley v. Chicago & N. W. R. Co.*, 293 U. S. 102, 79 L. Ed. 222, the court said:

"There is nothing in this record to suggest any lack of good faith on the part of the board. Overvaluation resulting from error of judgment will not support a claim of discrimination. There must be something that amounts to an intention, or the equivalent of fraudulent purpose, to disregard the fundamental principle of uniformity."

In *Chicago Great Western R. Co., v. Kendall*, 266 U. S. 94, 69 L. Ed. 183, 189, the court said:

"It is not enough, in these cases, that the taxing officials have merely made a mistake. It is not enough that the court, if its judgment were properly invoked, would reach a different conclusion as to the taxes imposed. There must be clear and affirmative showing that the difference is an intention discrimination, and one adopted as a practice."

The rule announced in the above cases is generally recognized and needs no additional citation of authority in its support.

The good faith of the Commission and Board and the validity of their action are presumed; when assailed, the burden of proof is upon the complaining party. *Sunday Lake Iron Co., v. Wakefield*, 247 U. S. 350, 62 L. Ed. 1154.

It is contended for the railway that the Commission and Board should have made the assessment on the basis of

capitalization of net income at a rate which would measure a fair return to the investor in the property; or, at least, that such method should have been made the predominant factor in arriving at the value of the property. Capitalization of net income is not specified in section 1526 of the Code; but this factor could have been considered along with other elements in fixing the value of the property. Incorporated in the assessment made by the Commission under the caption "Earnings" is a tabulated statement of net operating income for the years 1933-1938. A statement filed by the railway showed net operating revenue for the years 1931-1937 averaged \$947,530.60 per annum, and that the net revenue from non-operating property for the seven year period averaged \$13,747.28, making a total average net operating revenue of \$961,277.88. The insistence is that if this average net revenue be capitalized at 6%, a value of \$16,021,298 is shown for the entire system as compared with the \$23,996,604.14 fixed in the assessment. The statement of average income was considered by the Commission, as is shown by the following statement of one of the Commissioners made on the argument before them, " * * * to see what the trend was, whether the trend was upward or downward with the company, as justification for reducing or raising the assessment, so that was largely the purpose of having that in the brief, was what I thought." Greater weight was given to the most recent figures "to judge present day conditions."

We are unable to agree that the Commission, or the Board, was under any legal compulsion to make the assessment on the basis of capitalization of net income, or to make net income a predominant factor in arriving at the value of the property. A railroad is to be assessed according to its value as a railway, by taking into consideration the elements specified in Code, section 1526, which includes "other evidence taken to enable them to fairly and equitably fix the actual cash value of the properties." Counsel for the railway refers to *Railroad v. State*, 55 Tenn. 798, as approving decisions holding that "a tax can only be just and equal on railroad corporations by being assessed upon the profits." The court did not approve this as an exclusive method of ascertaining value; on the contrary, the court said, "we can

conceive of no better criterion by which its value can be ascertained, than, first, the value of the structure, superstructure and properties, and then the profits which may enure to its owners in its operation." The court further stated, "A tax on a corporation may be proportioned to the income-revenue, as well as to the franchise granted, or the property assessed," citing *Minot, Jr., v. Railroad*, 18 Wall. 206 (21 L. Ed. 888). *Railroad v. State*, *supra*, was decided prior to the enactment of the first railroad assessment law in 1875.

In *Great Northern Ry. Co., v. Okanogan County*, 223 Fed. 198, it is said:

"The value of a completed railroad is not easy of ascertainment. Railroads are not usually bought and sold on the open market. Their value is in use, rather than in exchange, and many elements go to make up that value. The cost of construction or reproducing, the income, the earning capacity, the value of stock and bonds, have all been taken into consideration by the courts. None of these elements are controlling, however."

A like statement to the above is to be found in 26 R. C. L. 189.

It is complained by the railway that the apportionment of distributable property to Tennessee on mileage basis is invalid. The Commission found the railway's distributable property in Tennessee to be the average value per mile of the system distributable property multiplied by the number of miles of main track in Tennessee. On the basis of a total mileage in the system of 1,115.34 of which 800.02 miles is in Tennessee, and the total entire value of distributable property to be \$18,022,133.14, the Commission assigned to Tennessee for taxation a value of \$12,926,944. It is contended by the railway that this method of allocation is contrary to statute (Code 1526) and has the effect of importing into Tennessee for taxation values located in other states, contrary to Article 1, section 8, and Article 2, section 28, of the Constitution of Tennessee, and the due process clause of the Fourteenth Amendment to the Constitution of the United States. It is further contended that the value of the

entire property (\$23,996,604.14) "is in substantial excess of any reasonable opinion or estimate of value supported by or deducible from any evidence upon which such assessment was made, and which finding of value is not supported by or based upon any evidence in the record upon which the assessment was made, all of the evidence showing that the actual value is not in excess of \$16,021,298." This is a renewal of the contention that the value of the property should have been fixed on the basis of capitalization of net revenue of the system, and not upon the basis adopted by the Commission.

In *Railroad v. State*, *supra*, at page 797, the court said, "If it be an interstate railroad, as in this case—a part in this State and a part in another—we know of no better plan to fix the taxable value of that portion lying in this State, than to ascertain what proportion the latter bears to the whole. Upon this subject, however, there is great conflict of authority, and great contrariety of judicial reasoning and ruling."

In *Franklin County v. Railroad*, 80 Tenn. 521, 540, the court said:

"No part of the mere roadway can be said to be more valuable than any other part, when considered as a track for the exercise of the franchises of the company as a common carrier. It is, like the franchise itself, a unit for the purposes intended, these purposes being not merely the use of the road for the profit of the company, but its use for the benefit of the public. Any interruption of that use is a public as well as a private calamity. 'It may well be doubted,' says the Supreme Court of the United States, 'whether any better mode of determining the value of that portion of the track within any one county has been devised than to ascertain the value of the whole road, and apportion the value within the county by its relative length to the whole.' *State Railroad Tax Cases*, 92 U. S. 608."

In *Pittsburg, C. C. & St. L. R. Co. v. Backus*, 154 U. S. 421, 38 L. Ed. 1031, the court quoted with approval the above paragraph taken from *Franklin County v. Railroad*,

and held, that the value of one part of a single continuous line of railroad is fairly estimated by taking the part of the value of the entire road which is measured by the proportion of the length of the particular part to that of the whole road, unless accompanied with proof that portions of the road outside of the state were of largely greater value than any similar length of road within the state. In *Cleveland, C. C. & St. L. R. Co. v. Backus*, 154 U. S. 439, 38 L. Ed. 1041, that in assessing a part of a railroad within a state, the other part of which is in an adjoining state, when the assessing board ascertains the value of the whole line as a single property, and then determines the value of that within the state, upon the mileage basis, that is not a valuation of property outside the state, if no special circumstances exist to distinguish the conditions in the two states, such as terminal facilities of enormous value in one and not in another.

The record in the instant case does not disclose that the portions of the railroad outside Tennessee are largely of greater value than the portion within the State, or that any special circumstances exist to show a greater value outside the State than within the State. The railway contends, however, that by breaking down the whole net revenue so as to show the portion thereof earned within the State as compared to that earned out of the State a greater value is shown to exist out of the State. The railroad was valued as a whole by the Commission. All of the elements set forth in Code, section 1526 were considered. Under the well established rule for assessment on a mileage basis, no exceptional facts appearing, the portion of the railroad in Tennessee could not be treated as an independent line, disconnected from the part without the State. Furthermore, the exception to the rule contemplates, we think, that it be clearly shown that the portion of the road out of the State has a greater value than the part within the State, such as terminal facilities or other improvements not found within the State.

Our conclusion on the question of allocation is that the assessment did not violate any of the railway's rights under the State Constitution, nor under the Fourteenth Amendment to the Federal Constitution.

Another complaint made by the Railway is that the Commission and Board assessed its property at actual value, while the property of all other taxpayers was assessed at two-thirds of its actual value. A large number of affidavits made by local assessors were filed with the Commission to the general effect that affiants intentionally and systematically assessed other property for taxation at an amount not exceeding 75% of its value. Affidavits from others to like effect were also filed.

County assessors are required by law to assess property at its actual cash value (Code 1349). And they take an oath of office that they will assess all property at its actual cash value (Code 1343). They must make oath to the assessment lists, which contains the statement that they have assessed all property at its actual cash value (Code 1375). The assessment lists are returned to the county court clerk.

The assessments as made by the county assessors are not final. On the contrary, the assessment lists are required to be delivered by the county court clerk to the county board of equalizers (Code 1424). Under Code 1426, the duties and powers of the board are defined. It is made their duty "to carefully examine, compare, and equalize the county assessments." It is further provided therein that, "said board shall have the power, and it is hereby made its duty, to increase or lower the entire assessment roll or any assessment contained therein, so as to equalize the assessment of all property contained therein, and make such assessment conform to the actual cash value of the property described in the assessment. If the property described in said assessment lists or any part thereof shall have been assessed at less than the actual cash value thereof, the value of the same shall be increased so as to conform to the actual cash value thereof, . . . (Italics ours.) [By the Court.]

Under Code, 1434, the county board upon returning the assessment roll to the clerk are required to append to the same a verification, signed by each member, that they have equalized and fixed the value of all property at the actual cash value thereof.

Under Code 1440, it is made unlawful for board to equalize at less than actual cash value. It is made the duty of the county board of equalizers to transmit to the State Board of Equalization a summary of the assessment as completed by it.

The State Board of Equalization is directed to meet at places throughout the State, selected by them. (Code 1448.) And it is provided in section 1456 that the Board "*shall have jurisdiction of, and it shall be its duty, to equalize during its session the assessments of all properties in the State*" and its action "*shall be final and conclusive as to all matters passed upon,* * * * *subject to judicial review.*" (Italics ours.) [sic]

If the county assessors and the few members of county boards of equalizers making affidavits on the hearing before the Commission assessed property at less than actual value, and did so intentionally and systematically, there is no showing whatever that the members of the State Board of Equalization violated their oath of office by underassessing property. In the absence of a contrary showing, it must be assumed that the State Board did their duty. There is neither allegation nor proof that the State Board intentionally and systematically refused to equalize assessments at actual value. The good faith of such officers and the validity of their actions are presumed. *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350, 62 L. Ed. 1154. In order to support a claim of discrimination under the equal protection clause of the Fourteenth Amendment there must be something that amounts to an intention or the equivalent of fraudulent purpose to disregard the fundamental principle of uniformity.

Another complaint made by the railway is that the Commission and Board included in the assessment interest bearing securities and corporate stocks to the value of \$2,484,000, not subject to taxation. The assessment shows on its face that the value of the railroad was fixed, "making due allowance for all non-taxable securities held." The securities were considered by the Commission merely as reflecting on the present financial condition of the railway but the value of the securities was not included in the assessment as is affirmatively shown in the assessment itself.

It is complained that the Commission included 3.65 miles of railroad, known as the "West Nashville Branch," as main track mileage in computing the value of the railway's distributable property. It is asserted that all of the evidence shows this line to be side tracks. The railway's own return shows this 3.65 miles to be main track.

From our examination of the record we are satisfied that the assessment made on the property of the railway was fair and equitable. There is nothing to support the contention that the assessment was discriminatory or arbitrary.

The record shows (ex. 19) that the property of the railway, in Tennessee, was valued for taxation in former and 1938-1939 years as follows:

"1923-1924	24,000,000
1925-1925	24,795,303
1927-1928	24,795,303
1929-1930	26,000,000
1931-	23,750,000
1932-1933	17,000,000
1934-1935	16,999,966
1936-1937	16,499,998
1938-1939	16,223,194"

The former valuations were not made the basis for the 1938-1939 assessment; but they may be looked to, on the argument that the railway's property had declined in value.

The Board in its opinion stated, "It will be seen, that the assessment made for the year 1938-1939, is a substantial reduction from the high of 1929-1930, indeed, a reduction in the sum of \$9,776,806.00. We are convinced that this reduction of companies assessment from the high point in recent years, is comparable with the reduction enjoyed by owners of other property, or any class of property, within the bounds of this State."

It is argued that property generally, throughout the state, is assessed for taxation at less than cash value; and that the court should take judicial knowledge of such underassessment. Whatever may have been the practice in this regard in former times, it is our belief that since 1930 as-

assessments generally are and have been higher than the actual cash value of the property assessed.

It is argued that the Commission "arbitrarily assessed the railway's distributable property at the valuation placed upon it for the preceding biennium, notwithstanding the abandonment of 38 miles of Tennessee main track which the Commission had in said previous assessment included at a valuation of \$15,407.93 per mile, aggregating \$587,500." The argument seems to be that the Commission and Board should have deducted from the assessment the sum of \$587,500 representing the value alleged to have been placed on 38 miles of main track in the assessment of 1936-1937, and asserted to have been thereafter abandoned. The railway returned 800.2 miles of main track for the 1938-1939 assessment and that is the mileage assessed. The 38 miles was not included in the return or the assessment. In considering the various factors and elements going to make up the distributable value of the properties for 1938-1939, the Commission and Board found the total value thereof (excluding the 38 miles above mentioned) to be \$12,926,944, which assessment it is asserted is the same as 1938-1939. The total assessment for 1938-1939 was \$276,804 less than for the previous biennium. The valuation for assessment of the 800.2 miles of main track returned by the railway for assessment fixed by the Board, under the statute and authorities hereinbefore cited, cannot be reviewed by this court, the Board not having exceeded its jurisdiction or acted illegally.

The opinion of the Board contains the following:

"This appeal presents to the Board a difficult problem. Each member is ex officio. Therefore, adequate time is not ours to give the necessary investigation to entirely satisfy even ourselves, that we may reach an equitable conclusion. However the responsibility is ours and we would not shirk it."

It is contended that this statement shows that the Board made the assessment, or approved the assessment without making necessary investigation. The opinion specifically refers to the railway's exceptions and there is nothing to show that they were not given consideration. While not dealt

with *seriatim* in the opinion, the conclusion reached was that the assessment made should stand. Various additional affidavits, charts and maps were introduced by the railway before the Board and there is nothing to show that these were not considered by the Board. On the contrary the record shows that the exceptions were fully argued before the Board and the able counsel for the railway and the Board acquainted the Board with all the pertinent facts and with their respective contentions. The assessment as made by the Commission, together with the whole record as made up before it, was filed with the Board, as required by Code 1535. The Board "proceeded to examine the assessment so made," as required by Code 1534. It received additional evidence from the railway. It is mere empty assertion to say that the Board did not give proper or sufficient consideration to the cause. To upset the decision of this quasi court because of the expression set out above, which was immediately followed by the language, "However, the responsibility is ours and we would not shirk it," when there had been a full hearing on the exceptions, would be wholly unwarranted, especially when on a full hearing by the Board it was found that the exceptions were without merit, and subsequently so found, in effect, by the circuit judge.

After due consideration, we find all of the assignments of error to be without merit. The result is that the judgment of the trial court is affirmed. The railway will pay the costs of the appeal.

(S.) D. W. DE HAVEN,
Judge.

Cook, Jr., and Kennerly, *Sp. J.*, concur.
McKinney, *J.*, and Chambliss, *J.*, dissent.

4. Dissenting Opinion of Mr. Justice McKinney.

From Record, pp. 135-138.

Davidson Law.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILROAD
Plaintiff in Error,

v.

GORDON BROWNING, *et al.*, *Defendants in Error.*

DISSENTING OPINION.

I am of the opinion that the State Board of Equalization has not complied with the law, and for that reason the case should be remanded to that body in order that it may find the assessable value of the Railway property.

The State Board of Equalization, as I see the matter, has proceeded upon the theory that it is an appellate board to review and correct the errors committed by the Railroad and Public Utilities Commission when, according to my interpretation of the law, it is the final tribunal for fixing the value of the Railway property, and the report of the Commission is only advisory and informative. The Commission assesses the property and then certifies same to the State Board of Equalization for its final determination as to its cash value.

Under the law it is made the duty of the Railway to file a sworn schedule on the first day of April biennially, in the even years, giving the Commission the information set forth in section 1509 of the Code. Other pertinent statutes are as follows:

1526. "Upon examination of every such schedule and statement and other evidence taken by them, the said commission shall proceed to ascertain and determine the value of said property within the state for taxation and assess the same accordingly, taking into consideration the capital stock, corporate property, franchises, and gross receipts, the market value of the shares of stock and bonded indebtedness, and such other evidence as is afforded by said statements and schedules or other evidence taken to enable them

to fairly and equitably fix the actual cash value of the properties of such persons."

1533. "Said assessments shall be completed on or before the first Monday in August, and within ten days from the first Monday in August, the owner of any property assessed may appear and file exceptions to said assessment, together with such evidence as they may desire to submit as to the value of the property assessed, and at the expiration of said ten days, said commission shall reassemble and examine such additional evidence and exceptions as may have been filed, and act thereon, either changing or affirming their valuation. And on or before the first Monday in September, said commission shall file with the board of equalization the assessments made by them, together with such records as may be deemed necessary."

1534. "The state board of equalization shall proceed to examine said assessments so made by the commission, and they are authorized to increase or diminish the valuation placed upon any property valued by said commission, and are further authorized to require of said commission any additional evidence touching one or more of the properties assessed, and shall consider such additional evidence so furnished in fixing the correct value of any property so assessed, and said assessments shall not be deemed complete until corrected and approved by the said board of equalization; and the governor is authorized to call said commission at any time to perform the duties imposed upon them; provided, however, that if said board of equalization shall so desire, they shall have the power without referring any assessment to said commission, themselves to employ experts, accountants, and to call witness to testify upon any assessment certified to them by said railroad commission; and said board of equalization shall have the same powers to compel attendance of witnesses, production of books, papers, and documentary evidence as is by this statute given to said commission. Said board of equalization shall have the right to call upon the interstate commerce commission for any valuations of property in the office of the interstate commerce commission and evidence in possession of said commission in support of such valuations.

"All of the evidence thus acquired by said board of equalization shall be considered by them in addition to the evidence transmitted to said board by said commission in support of the assessment so fixed by said commission.

"Any expense incurred by said board in calling for the additional proof as to the value of any property certified to them by said commission shall be by said board of equalization certified to the state comptroller and paid by him out of any moneys in the treasury not otherwise appropriated."

1535. "On or before the third Monday in October, said board of equalization shall certify to the commission the valuation fixed by it upon each property assessed under this law, and the action of the board of equalization in fixing the valuation upon such property shall be conclusive and final and the valuation so fixed shall be assessed against said property and the taxes due thereunder be paid."

From the foregoing statutes it appears that the responsibility for finally fixing the value of the Railway property is vested in the State Board of Equalization, and it cannot discharge that duty by giving the report of the Commission a perfunctory and superficial examination and consideration.

The report of the State Board of Equalization begins with this statement:

"This appeal presents to the Board a difficult problem. Each member is *ex officio*. Therefore, adequate time is not ours to give the necessary investigation to entirely satisfy even ourselves, that we may reach an equitable conclusion."

As I construe the statutes, the assessment by the Commission does not become final until approved by the State Board of Equalization; that Board being vested with power to either increase or decrease the value placed upon the Railway property by the Commission even though there has been no appeal. The Board states very frankly that it did not have time to make the necessary investigation to enable it to reach an equitable conclusion. But the statute imposed such duty upon it, and until such investigation and consideration is made it has not complied with the law. In

this connection I wish to emphasize the fact that the statute authorizes the Board "to employ experts, accountants, and to call witnesses to testify upon any assessment certified to them by said railroad commission." They also have the right to call upon the Interstate Commerce Commission for any valuation made by it of the involved property. The State Board of Equalization is, therefore, vested with all necessary authority, and has the facilities at its disposal to enable it to arrive at an equitable and just valuation of the Railway property.

The State Board of Equalization, furthermore, seems to have been largely influenced by the 1936-1937 assessment of the Railway property, which, it states, the record shows was agreed to by the Railway. Such statement is not supported by the record; but if it was that would be no criterion of value, since the statute expressly provides the method by which such value is to be ascertained.

The Board in its report makes the following additional statement:

"It appears in the record, and it was stated in argument, that the Commission, in reaching its conclusion, looked to the capital stock, corporate property franchises and gross receipts, the market value of the shares of stock and bonded indebtedness, and all evidence as afforded by the returns, statements and schedules made by the company. We assume that their statements are true, and we understand that these elements must be used, as a matter of law, in making such assessments."

It is apparent from this statement that the Board did not consider these elements, as it was its duty to do, but proceeded upon the assumption that the Commission had considered same and had, therefore, arrived at a valuation in the manner provided in the statute.

Counsel for the State contend that there is no fixed, positive or definite formula for the valuation of such property. We are unable to accede to this position of counsel. The Board, necessarily, is to arrive at the valuation by the method set forth in the statute for the ascertainment of its value by the Commission. It was certainly never intended that the Commission should use one formula and the Board a different one.

This is a case of great importance both to the State and the Railway, and one that the Board should fully and carefully investigate and consider. Only three of the five members composing the Board participated in the hearing and consideration of this case. While the statute provides that three members of the Board shall constitute a quorum, I am of the opinion that as a matter of policy it would be better in a case of this magnitude and importance if it were heard, investigated and considered by the entire membership of the Board in order that as full and complete justice may be arrived at as is humanly possible.

McKINNEY, J.

5. Dissenting Opinion of Mr. Justice Chambliss.

From Record, pp. 138-143.

Davidson Law.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY,
Plaintiff in Error,

v.

GORDON BROWNING *et al.*, *Defendants in Error.*

DISSENTING OPINION.

I find myself in accord with the views expressed by Mr. Justice McKinney in his dissenting opinion. Whether because of "inadequate time" * * * to give the necessary investigation," as expressed in the opinion handed down by the Board of Equalization, or because of an under estimate by the members of that Board of the extent and nature of the duties which I understand the law imposes upon them in the making of railroad assessments, as distinguished from assessments of real estate generally, I am satisfied that errors appear.

I fully appreciate that the Circuit Court and this Court are restricted to the correction of errors involving excess of jurisdiction, illegality or fraud, without power to substitute our opinion as to value for that of the assessing tribunal, but no such restriction applies to the Board of Equaliza-

tion. That Board sits as a quasi-Court with *de novo* jurisdiction, with the obligation to render judgments of appraisal of value for taxation upon an *independent* investigation and examination into all the evidence. It is this judgment, so arrived at and exercised independently, which is made "conclusive and final."

It seems to me quite obvious from the recitals of the brief opinion filed, that the judgment fixing the assessment in this case was not so arrived at, but was rested largely upon two matters referred to in the opinion, (1) statements, or conclusions, in the report of the Railroad Commission, which, says the opinion "we assume * * * are true" (that is, have adopted without independent examination and verification); and (2) the record of assessments of this Railroad for previous years, set out in the opinion.

I realize the difficulty of the task which I understand the law imposes on the Board of Equalization, composed, as it is, of gentlemen whose duties incident to their several highly important offices are so exacting as to leave them little time for the discharge of their extra "ex officio" duties as members of this Board. To meet this situation, however, the legislature has expressly provided that the Board may employ their own experts and accountants and bring in evidence from various sources of different kinds, including such as may be in possession of the Interstate Commerce Commission, all in order that the Board of Equalization may fit itself to make its own finding and appraisal of values, on which to base its assessments. Now it does not appear that any such course was followed; but, as already suggested, the Board *assumed* the correctness of the conclusions reported by the Railroad Commission and adopted them in toto. However competent and capable the distinguished gentlemen composing the Railroad Commission are, the duty and responsibility is imposed, not upon them, but upon the Board of Equalization, of rendering a judgment, which shall be "final and conclusive", after making for itself the investigation necessary to enable it to fix for itself these values.

It was exceedingly important to the petitioner in this case that the broad *de novo* jurisdictional powers of the Board of Equalization should be fully and carefully exercised,—that

"adequate time" should be taken for "the necessary investigation" that the Board might "reach an equitable conclusion."

In addition to, and in line with the general criticism which I have felt constrained to make of the inadequacy of the examination apparently made by the Board of Equalization, in the exercise of its independent and final jurisdiction, an examination of the pertinent records convinces me that several specific errors appear going to the *legality* of the judgment of the Board of Equalization before us for review.

1. Reference has been made to the consideration given assessments of this Railway's properties for former years. One-third of the brief opinion of the Board is devoted to a comparative analysis of these former assessments which are quite apparently given predominant consideration. I find no authority for thus using assessments made in former years as a basis of value. The petition shows, and common knowledge of affairs supports, that radical and fundamental changes have taken place in the last few years in the conditions which basically affect the value of railroads, so that assessments of former years furnish today no fair controlling criteria for appraisal of this particular, and peculiar class of property. For example, what is known as the "franchise" of a railroad, formerly a highly important element of value, has today greatly less value. A franchise is a special privilege, originally granted to a subject by the Crown, now in this country by the Government. It implies profitable advantages not enjoyed generally, or competitively. A common incident of a franchise is a degree of monopoly. The grant to railroads carries the right of eminent domain, for instance. Inherent, therefore, in the franchise of a railroad, were former advantages which yielded automatically more or less large profits, not to be generally enjoyed. Now, this is changed, and it must be conceded—all men know it—that practically all of this element of value, formerly the dominant incident of the franchise, has been wiped out, in large measure by the policies and contributions to competition of the Government itself. This competition in transportation of passengers and freight, graphically set forth in the proof in the record, has apparently not only wiped out the major elements of value of

the franchise, but has diminished greatly the "use" value of the railroads as a whole, and calls for at present a thorough-going investigation of basic elements of value applicable to present day conditions, which it is apparent the Board of Equalization, for reasons indicated, did not undertake, or have opportunity, to make.

2. It is complained for petitioner that the Board of Equalization refused to regard the net earnings as an important element in fixing value. Attention is called to the argument before the Board of Equalization of Mr. Hendley, (expert and spokesman for the Railroad Commission) that "not once in the law do we find the word 'net'"; that "the elements principally are the 'gross' receipts, the value of the stock and bonds and the value of the corporate property"; and in commenting on the assessment made by the Railroad Commission, the opinion of the Board of Equalization says that it was the "gross receipts" which were considered. While it is true that in Code Section 1526 the expression "gross receipts" is used, we think it clear that the law as a whole contemplates that the operating expenses shall be considered in the same connection; thus arriving at the "net." The language of this section as a whole so requires, calling, as it does, for statements and schedules and other evidence as a basis for fixing the values. Also, Section 1509, setting out more specifically the information to be laid before and considered in making the assessment, expressly couples together the gross receipts and the expenses.

3. I think the record as a whole indicates that, contrary to the law applicable, certain intangibles of considerable amount, non-taxable under what is known as the Hall income tax law, have been taken into account in fixing the valuation arrived at as a whole. If this is so, then the assessment has to this extent, certainly, been illegally arrived at. The brief opinion is silent on this question, much stressed by petitioner, but it does appear that Mr. Hendley, the official spokesman for the Railroad Commission, in presenting the case to the Board of Equalization, did specifically call attention to the fact that the Railway held these valuable assets and this item was thus plainly brought to the attention of the Board in support of the assessment figures as reported by

the Railroad Commission. It seems to me that it may be fairly assumed that these items were taken into account in fixing the assessment. In arguing before the Board of Equalization for its adoption of the assessment figures reported by the Railroad Commission, Mr. Hendley, above mentioned, said, "The N. C. & St. L. Railway unlike other railroads have a nice cash surplus on hand. Its financial set up is good. On January 1st of this year they had on hand cash and non-taxable Federal bonds and notes in the amount of \$3,569,801.00 to which should be added the \$140,000 earned since January, 1938." The inference seems plain that these elements showing the Railway's "financial set up is good" were considered in appraising the corporate properties as a whole—otherwise why mention them? Commenting on this matter, the majority opinion says, "These securities were considered by the Commission merely as reflecting on the present financial condition of the Railway. Obviously, such consideration reflected an increased value and thus served to bolster up the assessment as a whole."

4. Reference has been made to apparent reliance on assessments of former years. It is shown that 38.96 miles main track of petitioner's railroad, formerly assessed \$590,292.95, had been abandoned, with the approval of the Interstate Commerce Commission. This reduced the track mileage in Tennessee from 838.98 to 800.02 miles. The value fixed for assessment here is identical with that made in the greater mileage for 1936, being, in both instances, \$12,926,944.00. This seems to demonstrate that the assessment for this previous year was not only considered but adopted.

5. The evidence appears to show that 3.65 miles of track described as West Nashville Branch, is an industrial or siding track and that this trackage has been included in the assessment as returned as main track mileage.

Without further elaboration, I concur with Mr. Justice McKinney that justice demands that the case should be remanded to the Board of Equalization for a re-determination of the assessment.

CHAMBLISS, J.

6. Opinion on Petition to Rehear.

From Record, pp. 143-145.

Davidson Law.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
Plaintiff in Error,

v.

GORDON BROWNING *et al.* (State Board of Equalization),
Defendants in Error.

ON PETITION TO REHEAR.

This cause is again before the court on the railway's petition to rehear and the reply of the State Board of Equalization thereto. The court discussed in its opinion the questions made by the railway's assignments of error and decided the same. Most of the petition to rehear is devoted to a reargument of some of these questions. One new question is sought to be raised by the petition. It is asserted that the localized property of the railway was assessed at \$3,297,250 by the Board "without knowing or inquiring how the aggregate is made up," and that the Commission withheld from the Board "all information of its valuation of localized property items." This attack on the assessment was not specifically made by any of the assignments of error filed in this court. Rule 14 of this court provides, among other things, as follows: (173 Tenn., 874.)

"Assignment of Error.—The assignment of errors shall contain in the order herein stated:

"(1) * * *

"(2) A statement of the errors of fact or law relied upon to reverse or modify the same, showing *specifically* wherein the action complained of is erroneous, and how it prejudiced the rights of the appellant, or plaintiff in error, and reference to the pages of the record where the ruling of the court on matters constituting errors of law appears; and in case it is an error of fact, to the

pages of the record where the testimony is to be found relied upon to sustain the same." (Italics ours.)

The railway, as before stated, did not specifically assail as error the action of the Commission and Board in assessing its localized property at \$3,297,250. The rule assumes *prima facie* the correctness of the proceedings of the inferior courts, and imposes on parties assailing them the duty of specifically pointing out the errors of which they complain. *Denton v. Woods*, 86 Tenn. 37; *Wood v. Frazier*, 86 Tenn. 500. A subject on which no assignment of error has been made need not be considered on appeal. *Hawkins v. Habbell*, 127 Tenn. 312.

The exceptions filed before the Commission did not specifically complain of the assessment on the localized property. The petition for certiorari alleged that it prayed on appeal to the Board "to the end that said exceptions might be there further considered," and it was further averred that it was notified "that its exceptions as filed with the Railroad and Public Utilities Commission would be considered by the State Board of Equalization on November 2, 1938, and said hearing was accordingly held upon the evidence and record transmitted to the Board by the Railroad and Public Utilities Commission." The railway in its petition for certiorari to the circuit court exhibited therewith its exceptions. It was not alleged in the petition for certiorari that the assessment made on the localized property was illegal or void. No such issue was specifically tendered by the petition.

This court did not hold that the examination by the Board of the assessment made by the Commission was dependent upon the railway's appeal or limited or restricted thereby. On page 2 of the opinion the substance of Code 1534 defining the duties of the Board with reference to the assessment returned by the Commission is set out. But, as shown by the record, the railway in its petition for certiorari to the circuit court did not specifically allege that the assessment of its localized property made by the Commission and approved by the Board was invalid for any reason.

The railway's motion for a new trial, filed in the circuit court, does not contain in any of the grounds therefor an

specific complaint that the trial judge held the assessment of localized property valid, or that he refused to pass upon such question.

Rule 14 (5) of this court provides that the grounds upon which a new trial is sought in this court "will not constitute a ground for reversal, and a new trial, unless it affirmatively appear that the same was specifically stated in the motion made for a new trial in the lower court, and decided adversely to the plaintiff in error, but will be treated as waived, in all cases in which motions for a new trial are permitted." The following is recited in the rule:

"This is a court of appeals and errors, and its jurisdiction can only be exercised upon questions and issues tried and adjudged by inferior courts, the burden being upon the appellant, or plaintiff in error, to show the adjudication, and the error therein, of which he complains. *RR. Co. v. Johnson*, 114 Tenn., 640; *Wood v. Frazier*, 86 Tenn., 501; *Jacks v. Williams-Robinson Lumber Co.*, 125 Tenn., 123; *Hobbs v. The State*, 121 Tenn., 413; *Tennessee Central R. R. Co. v. Brown*, 125 Tenn., 351."

For the reasons stated above, the railway cannot be heard to complain in this court of the amount of the assessment made on its localized property.

The petition to rehear contains some erroneous inferences and deductions from matters decided by the opinion of the court. We are responsible alone for the opinion and not for the construction, inferences or deductions that counsel may place thereon.

The Board had jurisdiction. It did not act illegally. The railway makes no claim of fraud as against the Commission or the Board. The valuation placed on the properties of the railway for taxation by the Board cannot be reviewed by the courts, in the absence of fraud. See authorities cited in opinion.

Our conclusion is that the petition to rehear is without merit and must be overruled.

(S.) D. W. DEHAVEN,

Judge.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 789

THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY,

Petitioner,

vs.

GORDON BROWNING ET AL., CONSTITUTING THE STATE
BOARD OF EQUALIZATION OF TENNESSEE.

7

ON PETITION FOR WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF
THE STATE OF TENNESSEE.

PETITIONER'S REPLY TO BRIEF OF RESPONDENTS.

Wm. H. SWIGGART,
SETH M. WALKER,
EDWIN F. HUNT,
W. A. MILLER,
Attorneys for Petitioner.

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SUPREME COURT OF THE UNITED STATES

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BOARD OF EQUALIZATION OF TENNESSEE.

PETITIONER'S REPLY TO BRIEF OF RESPONDENTS.

This reply brief is filed pursuant to Rule 38, paragraph 4 (a), of the Revised Rules, 306 U. S. 718.

I.

The Assessment Was Arbitrarily Made.

The brief filed herein by the State Board of Equalization, respondents, follows the course pursued by the assessors from the inception of the assessment proceeding of declining to give consideration to the evidence of value in the record or to discuss its weight and application.

Respondents' brief supports the basic contention of petitioner that the value for assessment was arrived at by

bringing forward a previous assessment, without regard to the evidence of present value. To sustain the valuation made by the assessors it refers *only* to previous assessments and to the rate of assessment per mile of other railroads in Tennessee.

One hundred and twenty-seven miles of road track have been abandoned since 1929 (R. 310-A), more than half of the agency stations discontinued (R. 239), and nearly two thousand equipment units, cars and engines retired (R. 234). In 1929, the period of the high assessment, a net railway operating income of \$4,845,801 produced a net corporate income of \$3,623,948, while in 1937 a net railway income of \$840,290 produced a net corporate deficit of \$471,623 (R. 306-A). The present assessment is 62.2 per cent of the 1929 assessment; the yield of the property in 1937 only 18 per cent of the yield in 1929. The evidence reviewed in the petition and supporting brief demonstrates that the loss of earning power and value is not temporary but permanent.

The reference in respondents' brief to assessments of other roads is taken from the argument of the spokesman of the Railroad and Public Utilities Commission before the State Board of Equalization, unsupported by evidence (R. 97). Respondents ignore the evidence of the large percentage of unprofitable branch mileage in petitioner's system; a condition not shown to exist in the other systems referred to and which renders the comparison wholly inapplicable. Petitioner's main line tracks, from Nashville to Atlanta, 323.22 miles, are valued for assessment at \$37,200 per mile. (Assessment, R. 34, 38).

The general statement of the assessors that they had given consideration to enumerated elements or indicia of value, quoted on page 11 of respondents' brief, was made in the tentative assessment, dated August 23, 1938 (R. 37, 38). The comprehensive evidence of the value of the property was not filed by petitioner until on August 31, 1938 (R. 90).

and to that evidence the assessors' sole response was the reference to petitioner's ownership of tax-exempt securities and operating cash, and an assumed current increase in revenues of which there was no evidence (R. 92), quoted in full in the note at page 13 of the petition for certiorari.

Petitioner has not changed nor altered its position from that presented to the assessors in the first hearing, as noted on page 11 of respondents' brief, that the evidence on which the assessment is grounded contains no reliable or adequate proof of value except its earning capacity, based upon a fair capitalization of current earnings. We have never contended that the *statutes* of Tennessee limit the assessors to any kind or nature of evidence, but have consistently urged that the record of this assessment requires that valuation be primarily grounded on earning capacity or left to guesswork and conjecture. See page 18 of the petition for certiorari. Respondents have not pointed out any other evidence in the record upon which a fair valuation can be predicated.

Respondents, in their brief, make no denial of the averments of the petition for certiorari that:

1. The valuation placed by the assessors upon petitioner's railroad system (\$23,996,604.14, R. 37) is grossly in excess of the value shown by any evidence in the record, nearly fifty per cent greater than the value shown by capitalization of the average income for a period of seven years, and five million dollars in excess of the value shown by a combination of the capitalization of income and market value of stock and bonds tests or measures of value, generally accepted by valuation authorities (Petition, p. 15).

2. That the valuation was made by the arbitrary addition of \$750,247 per mile to the value of system distributable property fixed for the preceding biennium, in order that the

present assessment on a reduced mileage be made to exactly accord with the previous assessment (Petition, pp. 11-12).

3. That the assessors, and particularly the respondent Board, required by statute to make the assessment upon written evidence, arbitrarily added \$909,855 to the value of localized property in Tennessee as shown by the tax return, with no other evidence of the value of such property in the record, and without even specifying the items or location of the property to which the increased value was ascribed (Petition, pp. 14-15).

4. That the State Board of Equalization, required by statute to finally fix the value for assessment, totally abrogated its statutory duty to review the evidence and fix the value, but approved the valuation made by the Railroad and Public Utilities Commission upon a mere assumption that the Commission had made a correct valuation (Petition, pp. 15-16).

5. That the Railroad and Public Utilities Commission arbitrarily disregarded and rejected uncontradicted evidence of the reduced value of the property to be assessed because of ownership of tax-exempt securities and operating cash, and an unsupported assumption of increase in current revenues (Petition pp. 12-13).

These several contentions of petitioner are established without substantial controversy on the record. An assessment so made denies the fundamental principle of the Constitution invoked by the petition.

The New Jersey railroad tax cases cited by respondents sustain the principles of constitutional law invoked by petitioner, but differ materially and substantially in the evidence and facts to which those principles were applied.

Central R. Co. of New Jersey v. State Tax Department et al., 112 N. J. Law 5, 169 A. 489; certiorari denied 293

U. S. 568 (October, 1934) presented only the issue of discrimination in taxation arising from alleged underassessment of property other than that of railroads. *No direct evidence of intentional and systematic underassessment was adduced*, and the indirect evidence offered by the railroads was held by the State court to be insufficient to support the claim. No issue of gross overvaluation arrived at by arbitrary methods was presented.

In *Central R. Co. of New Jersey v. Thayer Martin*, 114 N. J. Law 69, 175 A. 637, the railroad did not invoke the Federal Constitution, and no Federal issue was presented.

Lehigh Valley R. Co. of New Jersey et al. v. Thayer Martin, 19 F. Supp. 63; on appeal to the Circuit Court of Appeals, Third Circuit, 100 F. (2d) 139; certiorari denied (March, 1939) 306 U. S. 651, was dismissed by the Circuit Court of Appeals on the ground that the questions presented, involving the same assessment reviewed in 114 N. J. Law 69, were "res adjudicata and this defense as asserted by the appellees is valid." 100 F. (2d) 147. Denial of the writ of certiorari may properly be ascribed to that ruling.

Many substantial points of difference between the facts of the case cited and the case at bar are apparent from the opinion of the Circuit Court of Appeals. The court criticized the method of valuation employed by the assessors, based primarily upon an appraisal of the physical properties in New Jersey and disregarding system values except in slight degree (100 F. 2d 142-143), but noted that the terminal properties of the railroads in New Jersey were unusually extensive, and that the record failed to disclose excessive valuation. No claim of arbitrary conduct such as is here presented was noted in the opinion, and the Circuit Court of Appeals found against the contention of the railroads that the method of physical valuation applied to the property in question was not "reasonably intended to ascertain the actual or market value of the properties." (100 F. 2d 144.)

Central R. Co. of New Jersey v. Martin, 30 F. Supp. 41 (Advance Sheets); decided by the District Court for the District of New Jersey in November, 1939, sustains the contention of the railroads on the evidence then before it that the New Jersey method of valuation, expressly disapproved in the earlier cases, had produced excessive valuations condemned by the constitutional principles applied in *Great Northern Ry. v. Weeks*, 297 U. S. 135, and in *Routley v. Chicago & N. W. Ry.*, 293 U. S. 102. After reviewing cases cited in the petition for certiorari herein, the District Court said:

"These references are sufficient to convince the court that it is mandatory upon the taxing authorities to make the assessments unequivocally evince and reflect the earnings of the railroads. This does not mean that if there are no earnings there will be nothing to assess, but it does mean that the assessments should *evidence the influence of earnings or lack thereof.* (Italics by the Court.)

"The decrease in earnings of these properties is not temporary, but has been due to a permanent loss of traffic as a result of changes in business and transportation methods. It must be remembered that these railroads were built to provide transportation before the perfection of the motortruck and the construction of the highway system. A large percentage of the traffic formerly carried solely by the railroads is now being transported by trucks, busses, etc. The rapid development of concrete state highways has resulted in the diversion to truck haulage of a vast tonnage of freight, including anthracite coal. Coal shipments have also declined because of the growing use of petroleum for fuel, which does not move by rail to any extent. The court is further moved to take notice of the loss of export traffic. Foreign nations have increased their custom duties on American products in reprisal for the increase in the tariff on imported goods with the result that their trade has gone elsewhere.

In order to reflect this deflation and diversion of business it is imperative that the earnings should permeate every item of railroad property, tangible, and intangible."

30 F. Supp. Advance Sheets 64.

The failure of respondents to make any effort to justify or support the assessment under review, by citation of evidence sustaining the valuation, is typical of the treatment of the controversy by the State and its assessors throughout the assessment proceeding, and clearly indicates awareness of failure to follow any legal or logical method of valuation complying with the constitutional requisite of due process of law, as shown by the petition for certiorari and record.

II.

Allocation of System Value to Tennessee.

Respondents have declined to respond to the evidence cited in the petition for certiorari as demonstrating error in the ruling of the State Supreme Court that the record fails to disclose that the portions of the railroad outside Tennessee are largely of greater value than the portion within the State; except to assert that "nearly all the expensive mountainous construction is located in Tennessee." (Brief, p. 21.)

The quoted statement is without support on the record and is made in apparent disregard of the uncontradicted proof that by actual appraisal of the Interstate Commerce Commission the investment cost of the road and fixed properties in Tennessee is only 64.11 per cent of the system investment, while the Tennessee road mileage, used as the sole basis of allocation, is 71.73 per cent of the system mileage (R. 310).

The brief shows that respondents applied what they considered a "general rule" of apportionment or allocation, while petitioner contends that due process of law requires the exercise of a sound judgment based on facts fairly reflecting the relation between value of the system as a whole and the part within the state. (Petition, pp. 19-23.)

The proof cited in the petition and supporting brief, and the finding by the assessors of variation in value between the several divisions and branches, requiring a different method of allocation between the several counties and taxing districts of the State, demonstrates that a supposedly "general rule" was applied without the required exercise of judgment with respect to the facts in evidence, resulting in an arbitrary and excessive valuation for assessment in Tennessee.

III.

Equalization With Assessments of Other Property.

Respondents' brief (p. 23) states that the record contains direct evidence, admissions by tax assessors and county boards of equalization of intentional and systematic adoption and execution of a purpose to underassess property for taxation at an arbitrary percentage of actual value nowhere in excess of seventy-five per cent, from "less than one-third of the State's ninety-five counties."

The petition for certiorari and supporting brief show that the counties whose assessors admit adherence to the system of underassessment contain approximately ninety per cent of the petitioner's Tennessee road mileage (pages 28, 60-63). The average county tax rate is \$2.22 on each one hundred dollars assessment, while the state tax rate is only eight cents (R. 301). The substantial discrimination complained of therefore is produced by the underassessment of other property in the counties wherein peti-

tioner's property is located and taxed. It is not so material whether the system of underassessment is applied in other counties, although the proof shows it to be uniformly followed throughout the state.

The petition and supporting brief state petitioner's contention that the proof in this record precludes any resort to a presumption, based on the statutory oath of tax assessors and equalizers, that the State Board of Equalization increased the assessments of other property to the level of actual value (pages 30, 57-64).

Respondents insist that the State Board of Equalization is vested with power to increase assessments made by local assessors, without the sworn and specific complaint of underassessment required by section 1450 of the Code of Tennessee, quoted at page 66 of the appendix to the petition for certiorari. They ignore the declaration of section 1433 of the Code of Tennessee that the action by the county board "shall be final, except in so far as the same may be revised or changed by the state board of equalization" (Appendix to Petition, p. 65). And respondents do not controvert the statement of the petition (p. 29) that no such increase in assessment is permitted by the statute (Code, 1453; App. 66) without personal service on the property owner of notice to appear and show cause why his assessment should not be increased. The universality of the underassessments shown in the proof reduces to absurdity a presumption that a board composed of the principal political officers of the State, ex officio, served such notices upon all the property owners of the thirty-one counties here involved, and corrected the underassessments purposely made by local assessors.

The State Supreme Court indulged no such presumption. It merely presumed that, to the extent its jurisdiction was invoked, the State Board made its equalizations at actual value, and therefore had no part in the underassessment of

property generally; upon which presumption the court ruled that petitioner must fail in its claim to relief because it had not shown a fraudulent purpose on the part of the State Board. This is the true meaning of the excerpt from the opinion quoted on the respondents' brief at pages 22-23. This ruling is shown to be erroneous by the decision of this Court in *Greene v. Louisville and Indiana R. Co.*, 24 U. S. 499, 518, quoted in the petition for certiorari at page 30-31. The error of the State Board, of which the petitioner complains is that, approving an assessment of petitioner's property at a value equal to or exceeding actual cash value, it arbitrarily rejected and refused to give effect to uncontradicted proof of the intentional and systematic underassessment of other property, so that, as held in the case above cited, "the whole assessment, considered as one judgment" is a fraud upon the petitioner's property.

Section 1469 of the Code of Tennessee provides: "Minutes of each day's session of the board (the state board of equalization) shall be kept and signed by its members; such records to be preserved in the office of the department of finance and taxation." The minutes so kept and preserved are public records. They show every official action of the Board, and no controversy with respect to their recitations is possible. The important constitutional right herein asserted should not be disposed of on presumption of the contents of an official record so available. If the facts with respect to action by the State Board are by the Court deemed material, petitioner respectfully asks permission to file, and refer to, a certified copy of the minutes of the Board containing its record of the 1937-1938 assessment. Such minutes, made by respondents, were known to them when they denied petitioner's claim for equalization without claiming for themselves that the assessment to which petitioner's proof referred had been reviewed by them and raised to the level of actual value.

As precedent for the request that the Court permit reference to the official record of respondents, petitioner cites *Norris v. Alabama*, 294 U. S. 587, 593, wherein this Court permitted the production of a jury roll, a public record of the State of Alabama, upon the argument, and examined it in aid of evidence that a constitutional right had been wrongfully denied.

In none of the cases cited on the brief of respondents, in which judicial relief was denied, did the evidence contain uncontradicted admissions by assessors, to the extent shown herein, that they had intentionally and systematically departed from the statutory measure of assessment and had substituted an arbitrary percentage of value, substantially less than actual value, at which they had assessed all property within their jurisdiction. Therefore none of the cases cited supports the position of respondents. Particularly is this true of the New Jersey cases, considered hereinabove, the evidence in which contained no such direct evidence of systematic and long-continued departure from constitutional principles of uniformity in taxation.

Petitioner respectfully submits that the fraud on petitioner's fully assessed property, shown by the admissions of the assessors of other property subject to the same tax, permeates the entire assessment and requires proof of its eradication and correction rather than a judicial presumption, untrue in fact and unreasonable from every practical consideration. The testimony of the local assessors herein demonstrates that the penal statutes cited by respondents have proven ineffective to force local assessments at actual value, and that constitutional equality in taxation in Tennessee can be accomplished only by the decision of this

Court that the discriminatory assessment of petitioner's property cannot be enforced.

Respectfully submitted,

THE NASHVILLE, CHATTANOOGA &
ST. LOUIS RAILWAY,
By WM. H. SWIGGART,
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April 5, 1940.

(7304)



In the
Supreme Court of the United States

October Term, 1939

No. 789

THE NASHVILLE CHATTANOOGA & ST. LOUIS
RAILWAY

Petitioner,

v.

GORDON BROWNING ET AL. CONSTITUTING THE
STATE BOARD OF EQUALIZATION OF TENNESSEE.

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI.

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No. 789

THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY

Petitioner,

v.

GORDON BROWNING, ET AL., CONSTITUTING THE
STATE BOARD OF EQUALIZATION OF TENNESSEE,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

Pursuant to the rules of the Supreme Court of the United States, Rule 7, sec. 3, respondents herewith submit their brief in opposition to the jurisdiction of the Court to grant the writ of certiorari prayed for in this cause by the the petitioner, the Nashville, Chattanooga & St. Louis Railway.

STATEMENT OF THE CASE

The petition for writ of certiorari in this cause involves the validity of the assessment of the property of the Nashville, Chattanooga & St. Louis Railway by the State of Tennessee

for ad valorem taxation for the years 1938-1939. No other railway or railways operating in the State of Tennessee are here involved, nor did the other railways participate in any manner in this litigation in the courts of Tennessee.

The Nashville, Chattanooga & St. Louis Railway is a valuable railway property, with main line mileage of 1115.35 miles. Of this main line mileage 800.02 miles, or 71.73%, is located in the State of Tennessee. The remaining 315.33 miles, or 28.27%, is located in the states of Alabama, Georgia and Kentucky. The assessment of the property of this particular Railway has been reduced from \$26,000,000 in 1929-1930 to \$16,223,194 in 1938-1939. (R., p. 132.)

The assessment of the Railway's property for the years 1938-1939 of which the Railway complains in this cause represents a reduction of \$276,804 less than the assessment made for the previous years of 1936-1937. (R., p. 132.)

Reductions of assessment amounting to approximately \$10,000,000 have been granted to this Railway by the State of Tennessee during the past ten years. (R., p. 132.)

The Court's attention is invited to a clear and accurate map of the Railway, which shows the extended scope of its operations from the standpoint of geography and density of population. From said map (R. 500C) it is readily seen that the Railway operates between and serves such important centers of population and trade as Memphis, Tennessee; Nashville, Tennessee; Chattanooga, Tennessee; Atlanta, Georgia; Paducah, Kentucky; Hickman, Kentucky, and many other smaller but important towns and cities.

It is not insisted by petitioner that there have been any recent changes in the statutes of Tennessee relative to the assessment of property for ad valorem taxation. No peculiar circum-

stances exist showing that this Railway has suffered any greater decrease in value than other railroads generally in the United States. As stated before, however, the record does show that the assessment of petitioner's property has been consistently reduced by the State of Tennessee to the extent of approximately 40% less than the assessment of 1929-1930.

The following former valuations were not made the basis for the 1938-1939 assessment, but do reflect and conclusively demonstrate the consistency with which large reductions of assessment have been enjoyed by this Railway:

"1923-1924	\$24,000,000
1925-1926	24,795,303
1927-1928	24,795,303
1929-1930	26,000,000
1931-	23,750,000
1932-1933	17,000,000
1934-1935	16,999,966
1936-1937	16,499,998
1938-1939	16,223,194"
	(R., p. 132.)

The Railroad & Public Utilities Commission valued the distributable property in Tennessee (800.02 miles) at \$12,926,944, which had the effect of valuing the distributable property of petitioner in Tennessee at \$16,158 per mile. The Railway contends that it should have been fixed at \$9,007 per mile.

The record reveals that the assessment per mile of petitioner's property as compared to the assessment per mile of other railroads operating in Tennessee is highly favorable to petitioner. From R., p. 97 it is shown that:

The Louisville & Nashville Railroad was assessed at \$34,683.00 per mile, and that that railroad did not appeal to the State Board of Equalization.

The Southern Railway Company, \$21,251.00 per mile.

Harriman and Northeastern Railroad, which is not even a Class I railroad and which operates from Harriman to Petros, was assessed at \$12,000.00 per mile.

East Tennessee and North Carolina Railroad, which is a narrow gauge road operated from Johnson City to a point in North Carolina, \$12,000.00 per mile.

Mobile and Ohio Railroad, which at the time of assessment was in the hands of receivers, \$15,000.00 per mile.

Gulf, Mobile and Northern Railroad, \$12,000.00 per mile.

Illinois Central Railroad, \$46,451.00 per mile.

Kansas City, Memphis & Birmingham Railroad, which is now in the hands of receivers, \$26,183.00 per mile.

Clinchfield Railroad, which has not for years earned its fixed charges, \$40,000.00 per mile. This railroad did not appeal to the State Board of Equalization.

(R.. p. '97.)

Under Tennessee statutes the Railroad & Public Utilities Commission is directed by statute (Code sec. 1508) (Appendix p. 44) to assess for taxation for State, county and municipality property of every description, tangible and intangible, within the State belonging to railroad companies and other named public utilities. It is provided that the Commission shall assess all of such property biennially, in even years, at its actual cash value as of the same date the properties of other persons are by law assessed. The owners of property assessable under the statute are required by Code sec. 1509 (Appendix p. 45) to file with the Commission sworn schedules and state-

ments of certain information. Section 1526 of the Code is as follows:

"Upon examination of every such schedule and statement and all other evidence taken by them, the said commission shall proceed to ascertain and determine the value of said property within the state for taxation and assess the same accordingly, taking into consideration the capital stock, corporate property, franchises, and gross receipts, the market value of the shares of stock and bonded indebtedness, and such other evidence as is afforded by said statements and schedules or other evidence taken to enable them to fairly and equitably fix the actual cash value of the properties of such persons."

The Railway filed its return with the Commission and after considering same, together with other evidence, the Commission fixed the cash value of the Railway's property in Tennessee for taxation at \$16,223,199 for the biennium 1938-1939.

(R., p. 37.)

The Railway filed numerous exceptions to the assessment (R., 150-190) which were denied after a full hearing and the Railway prayed and was granted an appeal to the State Board of Equalization. The statute (Code 1533) (Appendix p. 46) provides that the Commission shall file with the Board of Equalization the assessments made by them, together with such records as may be deemed necessary.

The State Board of Equalization in Tennessee is composed of the highest administrative officials of the State, to-wit: the Governor, Secretary of State, State Treasurer, State Comptroller and Commissioner of Finance and Taxation (a majority constituting a quorum.) (Code sec. 1448.) (Appendix p. 38.)

The Code, sec. 1534 (Appendix p. 47) provides that the Board shall proceed to examine the assessments so made and

are authorized to increase or diminish the valuation placed upon any property valued by the Commission and are further authorized to request of the Commission additional evidence touching the property assessed; that if the Board so desire they have the power without referring any assessments to the Commission, themselves to employ experts, accountants, and to call witnesses to testify upon any assessment certified to them by the Commission and to call upon the Interstate Commerce Commission for any valuation of property in the office of such Commission; that the assessments shall not be deemed complete until corrected and approved by the Board.

Under Code sec. 1535 (Appendix p. 48) the Board is required to certify to the Railroad and Public Utilities Commission the valuation fixed by them upon each property assessed and the action of the Board "in fixing valuation upon such property shall be conclusive and final and the valuation so fixed shall be assessed against said property and the taxes due thereon be paid."

The Board of Equalization reviewed the assessment of the Railway's property upon the entire record sent up by the Railroad Commission, together with additional evidence which the Railway was permitted to introduce (R., p. 94), and after argument of counsel the Board approved the assessment. Before the Board certified back to the Commission the amount of the assessment as approved, the Railway filed its petition for writs of *certiorari* and *supersedeas* in the Circuit Court of Davidson County. The Circuit Judge, upon motion of the Board, taking into consideration the entire record as certified to the Circuit Court by the Board, dismissed the petition for *certiorari* and discharged the *supersedeas*.

From this action of the Circuit Court the Railway appealed to the Supreme Court of Tennessee. The Supreme Court of

Tennessee affirmed the judgment of the Circuit Court. Two members of the Supreme Court of Tennessee dissented from the majority opinion and each has filed a separate dissenting opinion. (R., pp. 135 and 138.) *Neither of the dissenting opinions referred to are in any sense based or predicated upon a Federal question.*

For the convenience of the Court and supplementary to the above statement of the case, we are particularly including in the appendix to this brief (1) the assessment by the Railroad & Public Utilities Commission, (2) opinion of the State Board of Equalization, (3) opinion of the Circuit Court of Davidson County, Tennessee, (4) opinion of the Circuit Court of Davidson County, Tennessee, on motions for new trial, (5) opinion of the Supreme Court of Tennessee, (6) and (7) dissenting opinions of Justices McKinney and Chambliss, (8) opinion on petition to rehear of the Supreme Court of Tennessee.

In conclusion of our statement of the case, we deem it proper to mention that in addition to the parts of the record contained in the "printed" transcript of the record, there is also a vast amount of technical data contained in the record which was presented to and considered by the taxing officials and courts of Tennessee, but which neither counsel for petitioner nor respondents considered of sufficient importance to designate for printing upon this petition for *certiorari*.

BRIEF AND ARGUMENT

I.

THE REDUCED ASSESSMENT OF WHICH PETITIONER COMPLAINS WAS LAWFULLY MADE AND WAS NEITHER ARBITRARY NOR EXCESSIVE.

Counsel for respondents are fully aware of the rule that the denial of a petition for *certiorari* is in no sense binding upon this Court and is not regarded as authority. However, when one or more petitions for *certiorari* involving almost identical questions have very recently been presented to and denied by the Court, we deem it our duty to call the Court's attention to same.

The "New Jersey Railroad assessment cases" hereinafter referred to were so recently published that respondents did not have the benefit of the opinions in the Tennessee courts.

This Court within the last year has had occasion to fully consider contentions substantially similar to those here made by the petitioner, in a suit involving the assessment by the State of New Jersey of taxes on the properties of numerous railroads operating therein. Indeed, twice within the last six years the railroads of New Jersey have brought their alleged grievances to this Court, each time with the same result. Because of the striking similarity between the petitioner's contentions and those made by the railroads of New Jersey in their unsuccessful litigation, we here review briefly, for the convenience of the Court, the history of that litigation.

In 1932 the Central Railroad Company of New Jersey brought in the State Courts proceedings for a writ of *certiorari* to review a judgment of the State Board of Tax Appeals dis-

missing a complaint filed by the Railroad. The claimed ground for the relief sought was that the property of the petitioning Railroad was assessed at 100% of its true value while all other property throughout the State was assessed at not more than 60% of its true value. The Railroad attempted to support its claim with a type of evidence quite similar to that offered by the petitioner in the instant case. In *Central Railroad Company of New Jersey v. State Tax Department, et al.*, 112, N. J. Law, 5, 169 A. 489, the New Jersey Court of Errors and Appeals affirmed a judgment of the Supreme Court dismissing the Railroad's suit. The Railroad attempted to bring its suit to this Court, but *certiorari* was denied, *Central Railroad Co. v. State Tax Commission*, 293 U. S., 568, 79, L. Ed., 667.

Soon thereafter, all of the railroads operating in New Jersey with the exception of one brought new proceedings in the State Courts to review assessments made on their properties by the State taxing authorities for the year 1933. This time their grounds of complaint were two: in addition to insisting that the State authorities were assessing their property at its true value while assessing all other property at much less than its true value, the railroads contended that the State's method of assessment was fundamentally wrong in that neither the "stock and bond" method, nor the "capitalization of net earnings" method, nor a combination of these two methods, was employed in arriving at the value of the railroad's property. In *Central R. Co. of New Jersey v. Thayer Martin*, 114, N. J. Law 69, 175 A. 637, the Supreme Court of New Jersey sustained the assessments which had been made by the State taxing authorities and dismissed the railroads' suits.

The New Jersey railroads then resorted to the Federal District Court, and sought therein an injunction to restrain the

State taxing authorities from collecting taxes which had been assessed on the railroads' properties in the same manner as in the cases previously litigated in the New Jersey State Courts. The railroads' insurances in the injunction suit were the same as in the case of *Central R. Co. of New Jersey v. Thayer Martin*, 114 N. J. Law 69 175 A. 637. In *Lehigh Valley R. Co. of New Jersey, et al. v. Martin*, (December 1936) 19 F. Supp. 63, the District Court dissolved the temporary injunction theretofore granted and dismissed the suits of the railroads. The decree of the District Court was affirmed by the Circuit Court of Appeals for the Third Circuit in *Lehigh Valley R. Co. of New Jersey v. Martin*, 100 F. (2d) 139. These suits were finally terminated when this Court on March 13, 1939, denied *certiorari* and on April 17, 1939, denied a petition for rehearing. *Lehigh Valley Railroad Company of New Jersey, et al. v. Thayer Martin, et al.*, 306 U. S., 651, 83 L. Ed., 1049.

It is our very earnest insistence that the case of the petitioning railway in this suit is much weaker on its facts than was the case of the railroads involved in the New Jersey litigation. We therefore place much reliance upon the very recent action of this Court in denying *certiorari* in the New Jersey cases, and will refer to these cases in more detail hereinafter.

VALID METHOD OF VALUATION USED IN INSTANT CASE

The Railroad & Public Utilities Commission of Tennessee is required by statute (Code, sec. 1526, Appendix p. 46) to take into consideration certain recognized factors in making an assessment of railway property, to-wit: capital stock, corporate property, franchises, gross receipts, market value of shares of stock and bonded indebtedness, and such other evidence as is afforded by said statements and schedules, or other evi-

dence taken to enable them to fairly and equitably fix the actual cash value. However, under no statute and under no decision is there any inflexible, arithmetical rule of assessment.

In making the assessment involved herein, the Commission followed the provisions of the Tennessee statute above referred to and in their assessment (R., p. 37) stated:

"In valuing the property of the corporation for the purpose of taxation we will look to and consider the capital stock, corporate property, franchise and gross receipts, the market value of the shares of stock and bonded indebtedness, and all evidence as are afforded by the returns, statements and schedules made by the respondent, together with such other evidence taken as to enable this Board to fairly and equitably fix the actual cash value of the property to be assessed, making due allowance for all non-taxable securities held."

Assessment by Commission, (R., p. 37.)

It was the original position of the petitioner before the assessing bodies and the courts of Tennessee that the valuation of its property should be based upon its net earnings or capitalization of its net income. It was also urged by petitioner that the value of its property should be fixed by a capitalization of its net income at the rate of 6%—this to the practical exclusion of the other recognized elements of value.

In support of the above statement, we refer the Court to adversary counsel's statements before the Railroad Commission as follows:

"I believe it is to fix the base entirely on the earnings."
(R., p. 153.)

"I say, the earnings measure is the only measure the commission could ever adopt in order to get that. There are other tests, but in the final analysis, I believe I am

right, you will find it is the earnings value that taxing boards are trying to get at."

(R., pp. 154-155.)

"* * earnings or the general figures, after all, I take it is the earnings that is the value of the property."

(R., p. 155.)

"The earnings, by the present earnings is the only fair and reasonable and accurate method of reaching the system's worth."

(R., p. 156.)

Despite petitioners' present position before this Court upon the method of ascertaining value, the Supreme Court of Tennessee recognized the above insistence of the petitioner and understood that petitioner was insisting for a valuation based upon a capitalization of its net income at 6%, for it is commented upon in the opinion of the Court. The Supreme Court of Tennessee said:

"It is contended for the Railway that the Commission and Board should have made the assessment on the basis of capitalization of net income at a rate which would measure a fair return to the investor in the property, or at least that such method should have been made the predominant factor in arriving at the value of the property.

* * * *The insistence is that if this average net income be capitalized at 6%, a value of \$16,021,298 is shown for the entire system as compared with \$23,996,604.14 fixed in the assessment.*"

R., pp. 126-127, Appendix, pp. 75-76.

Respondents submit that the Railroad Commission and the State Board of Equalization did not act illegally by failing to adopt the particular formula of assessment (capitalization of net income at 6%) advanced by the Railway to the practical exclusion of other equally recognized factors. The respondents assert that every element of valuation set forth in Code

sec. 1526 (Appendix p. 46) has been approved in numerous cases by this Court as being a proper element in ascertaining the value of railway property, and those elements were taken into consideration by the assessing bodies of Tennessee in order to fairly and equitably fix the actual cash value.

The above measure of value as fixed by the Tennessee statute is precisely in accord with the authorities.

In *Rowley v. Chicago & N. W. Ry.*, 293 U. S., 109; this Court said:

"The ascertainment of the value of a railway system is not a matter of arithmetical calculation and is not governed by any fixed and definite rule. Facts of great variety and number, estimates that are exact and those that are approximations, forecasts based on probabilities and contingencies have bearing and properly may be taken into account to guide judgment in determining what is the money equivalent—the actual value—of the property. *Boom Co. v. Patterson*, 98 U. S., 403, 407 *et seq.*; *Cleveland, C., C. & St. L. Ry. Co. v. Backus*, 154 U. S., 439, 445. *Adams Express Co. v. Ohio*, 166 U. S., 185, 220. *Brooklyn City R. Co. v. New York*, 199 U. S., 48, 52. *Omaha v. Omaha Water Co.*, 218 U. S., 180, 202-203. *Minnesota Rate Cases*, 230 U. S., 352, 434, 454. *Branson v. Bush*, 251 U. S., 182, 185-188. *Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n.*, 262 U. S., 276, 287. *United States v. New River Collieries*, 262 U. S., 341. *Brooks-Scanlon Corp. v. United States*, 265 U. S., 106, 123-126. *Standard Oil Co. v. Southern Pacific Co.*, 268 U. S., 146, 155 *et seq.* *McCardle v. Indianapolis Water Co.*, 272 U. S., 400, 410, 414. *Olson v. United States*, 292 U. S., 246, 255 *et seq.*"

In *Great Northern Railway Co. v. Okanogan Co.*, 223 Fed., 198, it is said:

"The value of a completed railroad is not easy of ascertainment. Railroads are not usually bought and sold on

the open market. Their value is in use, rather than in exchange, and many elements go to make up that value. The cost of construction or reproducing, the income, the earning capacity, the value of stock and bonds, have all been taken into consideration by the courts. *None of these elements are controlling, however.*"

A like statement to the above is to be found in 26 B. C. L., p. 189.

For a most exhaustive discussion of the evidential factors for determining the true value of railroad property for taxing purposes, the cases of *Northern Pacific Ry. Co. v. Adams Co.* (D. C.), 1 Fed. Sup., 163, at pp. 172-173, *Heiner v. Crosby* (C. C. A.), 24 Fed. (2d), 191-193, *Pleasant v. Missouri, Kansas & Texas R. Co.* (C. C. A.), 66 Fed. (2d), 842, at p. 847, are typical and illustrative.

In *Illinois Central Ry. v. Greene*, 244 U. S., 555, 61 L. Ed., 1309-1316, this Court said:

"The first three points relate to valuation, the last two to apportionment. The district court properly held that the action of the Board must be sustained unless it was made to appear that they had adopted a fundamentally wrong principle, or had been guilty of fraud. It held further, that no fundamentally wrong principle was involved in determining whether such a railroad system should be valued on the capitalization-of-income, or on the stock-and-bond plan; or, if the former, *what rate of interest should be used in capitalizing, or how many years' earnings should be considered, or what was in fact the amount of net income for a given year; or, if the stock-and-bond plan was adopted, what was the value of the stock and bonds; and that on these and similar matters the action of the Board, in the absence of fraud, was binding upon the court.* In this we concur." (Italics ours.)

Illinois Central v. Greene, supra.

The above cited authorities all recognize and support the proposition of law that there are numerous factors to be taken into consideration by a board of equalization in determining the value of a railroad. The Tennessee statutes recognize the same rule and point out to the Railroad Commission and State Board of Equalization, to a limited extent, the factors to be considered by them. No statute, or decision of the courts either for that matter, adopts any one method of valuation to the exclusion of the others; nor is there any effort to dictate to the Railroad Commission or a board of equalization the precise weight to be accorded to one or more of the factors of valuation. Common sense and human experience preclude any adoption of a method so inflexible.

Before this Court, and on page 18 of the petition, counsel for petitioner is agreeing with the opinion of the Supreme Court of Tennessee that the statutes do not require that net income be made a predominant factor in arriving at the value of railroad property for assessment. This position, however, was not in accord with petitioner's position before the taxing officials and in the courts of Tennessee—the parts of the record hereinabove cited and also the opinion of the Supreme Court of Tennessee *definitely show that petitioner was then insisting upon a capitalization of net income at 6% as a predominant or only reasonable method of fixing the value of its property.*

We would remark in conclusion that, taking into consideration the vast amount of wholly unproductive property in the country upon which taxes are paid and the fact that the rate of interest return upon national and State obligations, as well as all other investments, is notoriously lower than in previous years,—the Railway's insistence upon a valuation based upon capitalization of net income at 6% was unreasonable.

II.

ALLOCATION OF SYSTEM VALUE TO TENNESSEE
UPON A MILEAGE BASIS HAS BEEN GENERALLY
APPROVED AS A FAIR AND JUST METHOD.

It is complained by petitioner that the apportionment of distributable property in Tennessee on a mileage basis is invalid. The Railroad Commission found the Railway's distributable property in Tennessee to be the average value per mile of the system's distributable property multiplied by the number of miles of main track in Tennessee. On the basis of the total mileage in the system of 1115.34, of which 800.02 miles is in Tennessee, the total or entire value of distributable property was found to be \$18,022,133.14. The Commission assigned to Tennessee for taxation a value of \$12,926,944. It is contended by petitioner that this method of allocation, even though provided and required by Code Sec. 1526 (Appendix, p. 46), has the effect of importing into Tennessee for taxation values located in other states, contrary to the "due process of law" clause of the Fourteenth Amendment to the Constitution of the United States.

(R., pp. 15-17.)

It is further contended that the value of the entire property (\$23,996,604.14) "is in substantial excess of any reasonable opinion or estimate of value supported by or deducible from any evidence upon which such assessment was made, and which finding of value is not supported by or based upon any evidence in the record upon which the assessment was made, all of the evidence showing that the actual value is not in excess of \$16,021,298."

(R., pp. 10-11.)

The above statement is simply a renewal of the contention that the value of the property should have been fixed on the basis of capitalization of net income of the system at 6% and not upon the statutory basis adopted by the Railroad Commission.

Petitioner states on page 21 of the petition that the Supreme Court of the State cited only the early cases of *Pittsburgh, C., C. & St. L. v. Backus*, 154 U. S., 421, and *Cleveland, C., C. & St. L. R. Co. v. Backus*, 154 U. S., 439, as sustaining "the well-established rule of assessment on a mileage basis."

The Supreme Court of Tennessee held that the record in the instant case did not disclose that the portions of the railroad outside of Tennessee were of greater value than the portion within the State, or that any special circumstances existed to show a greater value outside the State than within the State.

(R., p. 130, Appendix, p. 79.)

Respondents submit to the Court that in valuing an interstate railroad the mileage basis of apportionment of value has been adopted by the courts almost to the exclusion of any other method. General statements of this rule are:

"Valuation as a whole and apportionment according to mileage is an approved method and is constitutional. . . ."

Cooley on Tax'n., Vol. 2, pp. 1934-1935.

"If a railroad extends into two or more states its value as a whole may be determined and the assessment made in proportion to the mileage within the state, unless there is good reason for rejecting the unit system."

Cooley on Tax'n., Vol. 2, Sec. 815, pp. 1660-1663.

"The doctrine of the court of last resort is that taxing officers may make a valuation upon a mileage basis, al-

though the property assessed is used as an instrumentality of comineree between the states."

Elliott on Railroads, Vol. 2 (3d Ed.), p. 314.

"Valuation of an interstate railroad as a whole and apportionment according to mileage is an approved method and is constitutional."

Fletcher on Corporations, Vol. 14, pp. 899-901.

Among the numerous cases in which this Court has approved the mileage basis of apportionment are: *Pullman Co. v. Pa.*, 141 U. S., pp. 18-19; *Maine v. Grand Trunk Ry. Co.*, 142 U. S., 217-236; *Branson v. Bush*, 251 U. S., 182, 64 L. Ed., 215; *Taylor v. Secor*, 92 U. S., 575; *Union Pacific Ry. Co. v. Ryan*, 113 U. S., 516-527.

Respondents submit that the decisions of this Court, the decisions of the inferior Federal courts, and the decisions of the State courts are so numerous that a mere citing of same would unnecessarily encumber our brief. Consequently, we cite hereinafter only a few of the authorities collected.

In *Pittsburgh, C. C. & St. L. R. Co. v. Backus*, 154 U. S., 421, 38 L. Ed., 1031, the Supreme Court of the United States said:

"Nevertheless, it is ordinarily true that when a railroad consists of a single continuous line the value of one part is fairly estimated by taking that part of the value of the entire road which is measured by the proportion of the length of the particular part to that of the whole road. This mode of division has been recognized by this court several times as eminently fair. Thus, in *State R. Tax Cases*, 92 U. S., 608 (23:671) it was said:

"It may well be doubted whether any better mode of determining the value of the portion of the track within any one county has been devised than to ascertain the

value of the whole road; and apportion the value within the county by its relative length to the whole.'

"And again, on page 611 (672) :

" 'This court has expressly held in two cases, where the road of a corporation ran through different states, that a tax upon the income or franchise of the road was properly apportioned by taking the whole income or value of the franchise, and the length of the road within each state, as the basis of taxation.' *Minor v. Philadelphia, W. & B. R. Co.* ('Delaware R. Tax'), 85 U. S., 18 Wall., 206 (21:888); *Erie R. Co. v. Pennsylvania*, 88 U. S., 21 Wall., 492 (22:595)."

"The mileage basis of apportionment was also sustained in *Western U. Teleg. Co. v. Atty. Gen.*, 125 U. S., 530 (31:790); *Pullman Palace Car Co. v. Pennsylvania*, 141 U. S., 18 (35:613); 3 Inters. Com. Rep., 595; *Maine v. Grand Trunk R. Co.*, 142 U. S., 217 (35:994), 3 Inters. Com. Rep., 807; *Charlotte C. & A. R. Co. v. Gibbes*, 142 U. S., 386 (35:1051); *Columbus Southern R. Co. v. Wright*, ante, p. 238."

In *Adams Express Co. v. Ohio State Auditor*, 165 U. S., 194, 41 L. Ed., 683, the Supreme Court of the United States said:

"And it has been decided that a proper mode of ascertaining the assessable value of so much of the whole property as is situated in a particular state is, in the case of railroads, to take that part of the value of the entire road which is measured by the proportion of its length therein to the length of the whole. *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S., 429 (38:1037)."

In *Atchison, T. & S. F. Ry. Co. v. Sullivan*, 173 Fed., 456 (Circuit Court of Appeals), the Court said, with reference to the mileage basis of apportionment:

"This method of assessment has been repeatedly sustained by the Supreme Court. *Pittsburgh, C., C. & St.*

L. R. R. Co. v. Backus, 154 U. S., 421, 428, 429; 430, 14 Sup. Ct., 1114, 38 L. Ed., 1031; *Adams Exp. Co. v. Ohio State Auditor*, 166 U. S., 185, 220, 221, 222, 224, 17 Sup. Ct., 604, 41 L. Ed., 965; *Adams Exp. Co. v. Ohio State Auditor*, 165 U. S., 194, 197, 221, 17 Sup. Ct., 305, 41 L. Ed., 683."

To the same effect are *Ames v. People* (Sup. Ct. of Colo.), 56 Pac., 663-664; *Northern Pac. Ry. Co. v. State* (Sup. Ct. of Wash.), 147 Pac., 52; *State, ex rel., Morton v. Black* (Sup. Ct. of Neb.), 100 N. W., 952; *People, ex rel., City of Chicago v. State Board of Equalization* (Sup. Ct. of Ill.), 68 N. E., 943; *Gulf R. R. Co. v. Morris*, 7 Kan. Rep., 210; *Vanceburg & S. L. Tnpk. Co. R. v. Maysville & B. S. R. Co.* (Ct. of App. of Ky.), 63 S. W., 749; *Atl. Coast Line R. Co. v. Amos* (Sup. Ct. of Fla.), 115 So., 315.

It is to be conceded that in rare instances the courts have recognized exceptions to the general rule as above announced sanctioning the mileage basis of assessing interstate railroads. Those few cases are where the appurtenances of the road in foreign states give an altogether disproportionate value to that portion of the road which lies without the state. There must be special circumstances existing which distinguish between the conditions in the several states, such as terminal facilities of great value in one state and not in the other states, etc.

Counsel for respondents insist that the apportionment of distributable property to Tennessee on a mileage basis is eminently fair and just for the reason that this particular Railway very definitely falls within the general rule as above stated rather than under any exception thereto.

What exceptional circumstances require that this Railway should be valued otherwise than under the general rule? Approximately 70% of its mileage is located in Tennessee and of

the four large Southern cities which it serves, Memphis, Nashville, Chattanooga and Atlanta, three of these are located in Tennessee. There could hardly be any argument based upon the cost of construction, as we would venture the assertion that nearly all of the expensive mountainous construction is located in Tennessee. Giving full consideration to the figures which petitioner submitted to the assessing bodies and the courts of Tennessee, the respondents maintain that the showing is inadequate upon which to ignore the general rule of mileage basis apportionment.

III.

A. EQUALIZATION IN ASSESSMENT WAS NOT DENIED PETITIONER.

The remaining ground contained in the petition for *certiorari* alleges that petitioner was denied equalization. Petitioner's contention is briefly and correctly stated by the Supreme Court of Tennessee in its opinion as follows: (R., p. 130. Appendix, p. 80.)

"Another complaint made by the Railway is that the Commission and Board assessed its property at actual value, while the property of all other taxpayers was assessed at two-thirds of its actual value. A large number of affidavits made by local assessors were filed with the Commission to the general effect that affiants intentionally and systematically assessed other property for taxation at an amount not exceeding seventy-five per cent of its actual value. Affidavits from others to like effect were also filed."

In response to the above contention of petitioner, the Supreme Court of Tennessee held as follows: (R., pp. 131-132.)

"The assessments as made by the county assessors are not final. On the contrary, the assessment lists are re-

quired to be delivered by the county court clerk to the county board of equalizers (Code 1424). Under Code 1426, the duties and powers of the board are defined. It is made their duty 'to carefully examine, compare, and equalize the county assessments.' It is further provided therein that, 'said board shall have the power, and it is hereby made its duty, to increase or lower the entire assessment roll or any assessment contained therein, so as to equalize the assessment of all property contained therein, and make such assessment conform to the actual cash value of the property described in the assessment. If the property described in said assessment lists or any part thereof shall have been assessed at less than the actual cash value thereof, the value of the same shall be increased so as to conform to the actual cash value thereof, . . . ' (Italics ours.) (By the Court.)

"Under Code, 1434, the county board upon returning the assessment roll to the clerk are required to append to the same a verification, signed by each member, that they have equalized and fixed the value of all property at the actual cash value thereof.

"Under Code 1440, it is made unlawful for board to equalize at less than actual cash value. It is made the duty of the county board of equalizers to transmit to the State Board of Equalization a summary of the assessment as completed by it.

"The State Board of Equalization is directed to meet at places throughout the State, selected by them. (Code 1448.) And it is provided in Section 1456 that the Board 'shall have jurisdiction of, and it shall be its duty, to equalize during its session the assessments of all properties in the State' and its action 'shall be final and conclusive as to all matters passed upon, . . . subject to judicial review.' (Italics ours.) (sic.)

"If the county assessors and the few members of county boards of equalizers making affidavits on the hearing before the Commission assessed property at less than ac-

tual value, and did so intentionally and systematically, there is no showing whatever that the members of the State Board of Equalization violated their oath of office by underassessing property. In the absence of a contrary showing, it must be assumed that the State Board did their duty. There is neither allegation nor proof that the State Board intentionally and systematically refused to equalize assessments at actual value. The good faith of such officers and the validity of their actions are presumed. *Sunday Lake Iron Co. v. Wakefield*, 247 U. S., 350, 62 L. Ed., 1154. In order to support a claim of discrimination under the equal protection clause of the Fourteenth Amendment there must be something that amounts to an intention or the equivalent of fraudulent purpose to disregard the fundamental principle of uniformity."

(R., pp. 131-132.)

Respondents respectfully insist that the record does not show that the various county tax assessors and county equalization board members *intentionally and systematically* undervalue property assessed by them. There may have been isolated instances of undervaluation, but there is no evidence that such undervaluation was the result of any intentional and systematic scheme of underassessment.

If, however, it be assumed for argument that the affidavits of the county tax assessors and county equalization board members of less than one-third of the State's ninety-five counties offered by petitioner are sufficient to establish a practice of systematic and intentional undervaluation on the part of the affiants, still the petitioner fails to make out a case under the Fourteenth Amendment for the reasons stated in that part of the opinion of the Supreme Court of Tennessee as immediately quoted above. That Court carefully pointed out that under the applicable Tennessee statutes the action of the county tax assessors and county equalization board members,

with reference to the assessment of property throughout the State, is not final, but that the *State Board of Equalization is the final arbiter on the questions of valuation and is charged with the duty of equalizing assessments on all properties in the State.*

The Supreme Court of Tennessee properly held that since there was no showing by the Railway that the State Board of Equalization failed to do its statutory duty, it would be assumed that the Board performed its duty and raised the valuation of the properties referred to in the affidavits offered by the petitioner.

The petitioner, at page 8 of its petition for *certiorari*, says that:

"The Supreme Court of Tennessee declined to sustain the petitioner's claim to equalization, indulging a technical presumption that the State Board of Equalization had not participated in the underassessment of other property."

Respondents deny that the State Supreme Court, in ruling against the Railway, was merely "indulging a technical presumption." On the contrary, the conclusion reached by the Court, and which was attempted to be overturned by the Railway, was necessitated and dictated by a substantial and reasonable rule of universal application, i. e., in the absence of proof to the contrary, there is a presumption that every sworn officer does his duty.

By Section 1472 of the Code of Tennessee (Appendix, p. 41) the members of the State Board of Equalization, before entering upon the discharge of their duties, are required to "*take and subscribe to an oath that they will fairly and impartially perform the duties imposed upon them by this article, and equalize, fix and compute the values of all properties*

within their jurisdiction, so that the value thereof shall conform to the standard of the actual cash value of the same"

By Section 1451 of the Code of Tennessee (Appendix, p. 39) it is provided that the State Board of Equalization "shall equalize, compute and fix the value of all such properties within its jurisdiction by a standard or the actual cash value of same and for said purposes said board shall have the power *and it is made its duty to reduce or increase values of properties so that the value of all assessments when so equalized shall conform to the standard of actual cash value.*"

By Section 1456 of the Code of Tennessee (Appendix, p. 40) it is provided that the State Board of Equalization "shall have jurisdiction of *and it shall be its duty to equalize during its session the assessments of all properties in the State, including any appeals which may be filed by merchants from the action of the superintendent of taxation.*"

There is neither allegation nor proof by the petitioner that the Board of Equalization failed to perform its statutory duties. In this situation we submit that the State Supreme Court properly gave effect to the rule which has many times been applied by it and other courts everywhere; that is, in the absence of a showing to the contrary, it will be presumed that a sworn officer does his duty.

In *Dunlap v. Sawvel*, 142 Tenn., 696, at page 707, the Supreme Court of Tennessee said:

"It is a well-established law in Tennessee that every sworn officer does his duty, and in the absence of proof to the contrary this presumption will prevail. *Rogers v. Jennings*, 3 Yerg., 308; *Loyd v. Anglin*, 7 Yerg., 428, 431; *Mitchell v. Lipe*, 8 Yerg., 179, 181, 20 Am. Dec., 116; *Frierson v. Galbraith*, 12 Lea, 129; *State v. Myers*, 85 Tenn., 203, 207, 5 S. W., 377."

In *National Plastic Relief Co. v. Signal Amusement Co.*, 151 Tenn., 235, at page 237, the Court said that "the *presumption* is that the Secretary of State has done his duty in the premises. . . ." In *Lummas Cotton Gin Co. v. Arnold*, 151 Tenn., 540, at page 558, the Court said that "the *presumption* is that every sworn officer does his duty. . . ." In *Fort v. Dixie Oil Co.*, 170 Tenn., 464, at page 467, the Court said that "the *presumption* is that the Commissioner of Finance has done his duty in making his investigation and his findings. . . ." In *Treadwell Realty Co. v. City of Memphis*, 173 Tenn., 168, at page 175, there is a reference to "a sworn statement by the assessor, required by statute (Code, Sec. 1375), which it will be *presumed* conformed to the statute and was in the records before the Board."

In the case of *Hayes v. United States*, 170 U. S., 637, 42 L. Ed., 1174, one of the questions was whether or not a colonization law of 1824 had been promulgated in the territory of New Mexico at the time a certain grant was made. There was no proof in the record on this question. This Court said:

"The Constitution of Mexico in article 16, paragraph 13, made it the duty 'of the supreme executive power to cause to be published, circulated, and observed, the laws and the general Constitution.' 1 White, New Recop., 398. In the absence of proof *the presumption of omnia rita* creates the inference that the duty was performed."

In *King v. Mullins*, 171 U. S., 404, 43 L. Ed., 214, there was involved the validity of certain provisions of state laws with reference to the forfeiture of lands for nonpayment of taxes thereon. In its opinion in that case this Court said:

"It is said that the landowner will be without remedy if the commissioner of the school fund should fail to institute the proceeding in which the statute permitted such owner to intervene by petition and obtain a redemption

of his lands under forfeiture claimed by the state. *It cannot be assumed that the commissioner will neglect to discharge a duty expressly imposed upon him by law. . . .*

In the instant case the petitioner apparently concedes the force of the rule for which we are contending and endeavors to escape its application by an insistence that the power of the State Board of Equalization to raise the valuation of underassessed property extends only to cases where complaints are filed by a taxpayer under Section 1450 of the Code of Tennessee. (Appendix, p. 39.) It is said by the petitioner that there is no proof in the record as to whether or not any such complaints were filed under this Code section and that to presume that such complaints were filed and that the State Board raised the valuation of underassessed property as the result of such complaints would be to "pile presumption upon presumption."

This argument of course assumes that the Tennessee statutes, properly construed, limit the power of the State Board of Equalization to raise the valuation of underassessed property only in cases where complaints are filed under Code Section 1450. It is respondents' insistence that the Board's power cannot be held to be so limited. In fact, the Supreme Court of Tennessee, in construing these Tennessee statutes in the instant case and in the part of the opinion hereinabove quoted, expressly recognizes the duty and power of the Board of Equalization to raise or lower all assessments on property throughout the State.

There are numerous provisions in the applicable statutes which negative petitioner's idea that the State Board's revisory power over assessments extends only to cases where complaints are filed, and which strongly support our view that

the State Board's power is not so limited, but extends to *all assessments on all property* in the State.

Section 1456 of the Code of Tennessee (Appendix, p. 40) provides in part that the State Board of Equalization "shall have jurisdiction of and it shall be its duty to equalize during its session the assessments of *all properties in the State.*"

Code Section 1463 (Appendix, p. 40) provides that "the superintendent of taxation shall give his entire time to the work of gathering evidence and compiling same and making reports to the Board" of Equalization.

Section 1467 of the Code (Appendix, p. 41) provides that the State Board of Equalization "shall have the power to require the superintendent of taxation and any other agent or assistant employed to submit such facts and reports as may be deemed necessary to enable said board to *equalize assessments on property of the various classes and in the different localities of the State.*"

Section 1478 of the Code (Appendix, p. 41) provides that it shall be the duty of the superintendent of taxation "to obtain evidence, information and statistics relative to the value of the property to be assessed and equalized," and "*to procure the assessment of all property in the State at the actual cash value thereof.*"

Section 1462 of the Code (Appendix, p. 40) provides as follows:

"It is declared to be the legislative intent that this law be *liberally construed* in favor of the jurisdiction and powers conferred upon the superintendent of taxation; and upon the state board of equalization. The superintendent and/or board shall have and exercise all such incidental powers as may be necessary to carry out and effectuate the objects and purposes of this law, *to equalize the assessment of all properties subject to taxation.*"

In the face of this sweeping declaration of legislative intent, respondents are unable to see how it can be argued that the State Board of Equalization does not have power to raise or lower assessments on all property in this State, irrespective of whether complaints are filed or not. The statute relating to the filing of complaints is merely a remedy granted to the taxpayer—it cannot be construed as circumscribing the statutory authority conferred upon the Board of Equalization to equalize the assessment of all properties in the State.

In 61 Corpus Juris, p. 744, it is said that “the action of a board of equalization is automatic in the sense that no complaint, demand, or petition is necessary to set it in motion.”

Respondents therefore submit that since it was the power and duty of the State Board of Equalization to equalize the assessment on all properties throughout the State, and since there is neither *proof nor allegation* by the petitioner that the State Board did not perform its duty in this regard, the Supreme Court of Tennessee correctly held that it must be presumed that the Board performed its statutory duty and raised the valuation on all property, which in their judgment was underassessed to the level of its actual value.

B. THE EVIDENCE IS INSUFFICIENT TO SHOW A DENIAL OF EQUALIZATION.

In order to support a claim of discrimination under the equal protection clause, there must be something that amounts to an intention or the equivalent of fraudulent purpose to disregard the fundamental principle of uniformity.

In *Rowley v. Chicago & N. W. Ry.* (1934), 293 U. S., 111, this Court stated:

“There is nothing in this record to suggest any lack of good faith on the part of the board. Overvaluation re-

sulting from errors of judgment will not support a claim of discrimination. There must be something that amounts to an intention, or the equivalent of fraudulent purpose, to disregard the fundamental principle of uniformity. *Sunday Lake Iron Co. v. Wakefield*, 247 U. S., 350. *Sioux City Bridge Co. v. Dakota County*, 260 U. S., 441. *Chicago G. W. Ry. Co. v. Kendall*, 266 U. S., 94. *Iowa-Des Moines Bank v. Bennett*, 284 U. S., 239, 245. *Cumberland Coal Co. v. Board*, 284 U. S., 23, 28."

The New Jersey Railroad cases, in which a petition for *certiorari* was denied by this Court within the past year, are: *Central R. Co. of N. J. v. State Tax Department, et al.* (Court of Errors and Appeals of N. J.), 169 Atl. 489; *Certiorari Denied*, 293 U. S., 568, 79 L. Ed., 667; *Lehigh R. R. Co. v. Thayer Martin, et al.*, 100 Fed. (2d), 139; *Certiorari Denied*, 306 U. S., 651, 83 L. Ed., 1049-1050; Petition to Rehear denied April 17, 1939, 306 U. S., 669, 670, 83 L. Ed., 1063-1064.

An examination of those cases reveals that the railroads of New Jersey presented substantially the same type of evidence as was presented in the instant case in an effort to show a denial of equalization. In fact, a much stronger case in this regard was presented in the "New Jersey Railroad Cases" than has been presented in the case at bar. The petitioners there relied upon the same authorities as are relied upon in the case at bar.

In *Central R. Co. of N. J. v. State Tax Department*, 169 Atl. 493, the Court of Errors and Appeals of New Jersey said, in reference to the type of evidence presented:

"It is vague, indefinite, and unreliable. It opens wide the doors of fraud which might be practiced under its cover. The intrinsic value of such evidence is simply not present. This testimony, together with the other offered exhibits, falls far short of being definite, positive, or re-

liable. It is subject to many of the criticisms stated in relation to the evidence already commented upon. Hearsay evidence, incompetent exhibits, and reports are characteristic. The sum total of all the evidence offered does not justify the contention of the appellant that property throughout the state was systematically or intentionally undervalued or that it lacked equality and uniformity or that the local assessors in making valuation did not act in good faith.

"Appellant undertook to prove an organized and determined effort to undervalue property other than railroad property, systematically or intentionally. It must establish this undertaking as an adopted practice. *Chicago G. W. R. Co. v. Kendall*, 266 U. S., 94, 45 S. Ct., 55, 69 L. Ed., 183; *Sioux City Bridge Co. v. Dakota County*, 260 U. S., 441, 43 S. Ct., 190; 67 L. Ed., 340. 28 A. L. R., 979; *Southern R. Co. v. Watts*, 260 U. S., 519, 43 S. Ct., 192, 67 L. Ed., 375.

"... Mere errors of judgment by officials will not support a claim of discrimination. There must be something more—something which in effect amounts to an intentional violation of the essential principle of practical uniformity. The good faith of such officers and the validity of their actions are presumed; when assailed, the burden of proof is upon the complaining party.' *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U. S., 350, 38 S. Ct., 495, 62 L. Ed., 1154.

"The mere fact that there may be differences in the judgment of men respecting proper values is not decisive. Such differences do not evince discriminations prejudicial to appellant.

"A careful study of the many cases on the subject of the equality and uniformity of taxation leads to the observation so lucidly and effectively expressed by Justice Miller, speaking for the United States Supreme Court in the State Railroad Tax Cases, 92 U. S., 575, 612, 23 L. Ed., 663, wherein he held:

"... Perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised, must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect."

Central R. Co. of N. J. v. State Tax. Dept., supra.

In the instant case the State Board of Equalization had the following to say relative to the affidavits offered by petitioner relative to underassessment:

"This information is very interesting, but we are not familiar with the methods used by him (Mr. Ponder) in reaching his figures on actual cash value, nor do we know how the percentage of cash value was reached for assessable purpose. Many other affidavits are in the record purporting to establish that theory, but we think they are subject to the same objection as that of Mr. Ponder."

R., p. 102, Appendix, p. 59.

Upon the merits of the case, and referring to the large reductions of assessment enjoyed by petitioner over a period of years, the State Board of Equalization further said:

"We are convinced that this reduction of the Company's assessment from the high point in recent years is comparable with the reduction enjoyed by owners of other property or any class of property within the bounds of this State.

R., p. 101, Appendix, p. 58.

The Circuit Judge in his opinion, in referring to the affidavits offered by petitioner of underassessment of other property, stated:

"I do not find in any affidavit anything to indicate just how these affiants determined the question of 'cash value'

or that, in any instance they applied a proper rule of law in arriving at the 'cash value' of property.

"Every affidavit on file as to valuation represents the opinion of affiants. It may be the opinion of an expert or non-expert. The defendant Boards must have considered and weighed the value to be given these opinions. I have no right to assume they were arbitrarily disregarded. Is it the duty of this Court to say what value should be given to these opinions, and that the defendant Boards did not attach the proper value to such testimony? I think not."

R., p. 84, Appendix, p. 65.

Further, upon the merits of the case, the Supreme Court of Tennessee said:

"From our examination of the record, we are satisfied that the assessment made on the property of the Railway was *fair and equitable*. There is nothing to support the contention that the assessment was discriminatory or arbitrary."

R., p. 132, Appendix, p. 83.

Further, upon the merits of the case, and in reference to petitioner's contention that other property generally throughout the State was assessed for taxation at less than its present cash value, the Supreme Court of Tennessee expressly found:

"Whatever may have been the practice in this regard in former times, it is our belief that since 1930 assessments *generally* are and have been higher than the actual cash value of the property assessed."

R., p. 133.

The respondents make the point that the affidavits presented by petitioner fail to show by what mode of reasoning the affiants reach their estimates of value, or percentages of value. There being a wide divergence of opinion upon the "value" of the innumerable pieces and types of property within the State, the petitioners could undoubtedly solicit many

affidavits holding in accord with their contention. Such affidavits, however, are not sufficiently definite for the Court to ignore and set aside the official oaths of every official from the county tax assessors to the State Board of Equalizers as being false. *Neither the assessing bodies nor the courts of Tennessee anywhere express any doubt but that the assessment of petitioner's property was fair, just and equalized with all other property within the State.*

The character of the evidence offered could not justify a possible finding that there existed an organized and determined effort on the part of local assessors to assess systematically or intentionally local property at less than its true value. As said by this Court in *Sunday Lake Iron Co. v. Wakefield*, 247 U. S., 350, 62 L. Ed., 1154:

"It is clear that mere errors of judgment of officials will not support a claim of discrimination. There must be something more—something which in effect amounts to an intentional violation of the essential principle of practical uniformity. Good faith of such officers and validity of their actions are presumed; when assailed, the burden of proof is upon the complaining party."

In *Southern Ry. Co. v. Watts*, 260 U. S., 519, which was a suit to enjoin the collection of taxes by the State of North Carolina from certain railroad companies, the Railway relied upon the equal protection clause of the Federal Constitution. This Court said:

"The claim that plaintiffs have been denied equal protection of the laws appears to rest more largely on the charge that discrimination has been practiced against them in administering the tax laws. It is urged that county boards, proceeding under Sec. 28a of the Act of 1921, reduced real estate valuations quite generally, but that the state board acting under Sec. 28g, refused to reduce the valuation of any railroad except that of the

Norfolk & Southern. The rule is well settled that a taxpayer, although assessed on not more than full value, may be unlawfully discriminated against by undervaluation of property of the same class belonging to others. *Raymond v. Chicago Union Traction Co.*, 207 U. S., 20. This may be true although the discrimination is practiced through the action of different officials. *Greene v. Louisville & Interurban R. R. Co.*, 244 U. S., 499. But, unless it is shown that the undervaluation was intentional and systematic, unequal assessment will not be held to violate the equality clause. *Sunday Lake Iron Co. v. Wakefield*, 247 U. S., 350, 353; *Chicago, Burlington & Quincy Ry. Co. v. Babcock*, 204 U. S., 585; *Coulter v. Louisville & Nashville R. R. Co.*, 196 U. S., 599; *Sioux City Bridge Co. v. Dakota County*, ante., 441. Plaintiffs have clearly failed to establish that there was intentional and systematic undervaluation by the county boards."

In accord with the foregoing authorities are *Chicago Great Western R. Co. v. Kendall*, 266 U. S., 94, 69 L. Ed., 183; *Rowley v. Chicago & N. W. R. Co.*, 293 U. S., 102, 89 L. Ed., 223; *St. Louis-San Francisco R. Co. v. Middlekamp*, 256 U. S., 226, 65 L. Ed., 905; *Ohio Oil Co. v. Conway*, 281 U. S., 146, 74 L. Ed., 775.

Respondents respectfully point out to the Court that just as in the "New Jersey Railroad Cases," *supra*, the petitioner here has endeavored to fashion its proof to comply with the character of evidence that seems to appear in the class of cases of which *Louisville & Nashville R. Co. v. Greene, et al.*, 244 U. S., 522, 37 S. Ct., 683, 61 L. Ed., 1291, is typical. The evidence in the instant case, however, is not sufficiently definite, positive or certain in quantity or quality to overcome the presumption of the correctness of the assessment. The petitioner, having already secured approximately ten million dollars reduction of assessment in the past ten years, finds

itself in litigation wholly without merit and has found itself rebuffed by both the taxing authorities and the courts of Tennessee.

Respondents earnestly insist that the State of Tennessee has already dealt most generously with this petitioner when this assessment is compared with the assessment of all other property in the State, including other railroads and public utilities.

The petition for *certiorari* is wholly without merit, either from the standpoint of fact or law.

Respectfully submitted,

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APPENDIX.

CODE OF TENNESSEE—SECTIONS CITED.

SECTION 1375.

1375. *Assessor's oath to assessment list.*—Each assessor, when he makes his report of his assessment list to the county court clerk provided in the preceding section, shall accompany the same with the following oath, to be made and subscribed to before the judge or chairman of the county court and filed in the office of the clerk of the county court, viz.:

"I,, assessor of the county of, State of Tennessee, do solemnly swear (or affirm) that I have set out in the foregoing assessment list all taxable property, real and personal, and all the privileges and polls in said county of as far as ascertainable to the true owners thereof, and that I have required lists to be filled and filed and sworn to by all property holders or their agents or attorneys, and reported such as have not done so to the district attorney, and reported lists of all parties liable for polls, and that I have estimated the value of all property, real and personal or mixed, at its actual cash value as prescribed by law, to the best of my knowledge and ability, without fear, favor, or affection; and that I have faithfully discharged my duties and kept my oath of office as assessor, according to law to the best of my knowledge and ability, so help me God."

"Sworn to and subscribed before me this day of" (1907, ch. 602, sec. 10.)

SECTION 1424.

• 1424. *Assessment lists to be delivered to board by county court clerk.*—The county court clerk shall, at the first day's session of the board, deliver the county assessment lists or rolls to said board for its consideration. (Ib., 1921, ch. 135.)

SECTION 1434.

1434. *Board's certificate to assessment rolls upon returning same to county court clerk.*—Upon returning the assessment rolls of the

county to the county court clerk, the said board of equalizers shall append to or endorse upon the same a certificate signed by each member, viz.:

"We, the undersigned members of the board of equalizers of the county of, do hereby officially certify that we have equalized, computed, and fixed the values of all properties set out in the assessment rolls of said county, upon the standard of the actual cash value of the same, by raising the values of all properties assessed at less than the actual cash value thereof to the actual cash value of the same, or by reducing the values of all properties assessed at a greater than the actual cash value thereof to the actual cash value of the same, and otherwise faithfully and honestly obeyed the requirements of the assessment laws of the state and kept our oaths of office.

"Witness our hands this day of"
(Ib.; 1921, ch. 135.)

SECTION 1440.

1440. *Unlawful for board to equalize assessments at less than actual cash value.*—It is declared unlawful for any county board of equalization, or any member thereof, willfully, knowingly, or negligently to compute, fix, or equalize, or willfully, knowingly, or negligently to permit or suffer the same to be done, the value of any property at less than its actual cash value. (Ib.)

SECTION 1448.

1448. *Meetings; quorum; statute and publication only notice of times and places.*—The state board of equalization shall meet at the office of the commissioner of finance and taxation, annually on the second Monday in August. The commissioner of finance shall act as secretary to the state board. The governor shall act as chairman of said board and the said commissioner of finance shall make an annual report to said board, laying all facts and data assembled by the commissioner before said board for its consideration and action. Five members of said board shall constitute a quorum for the transaction of business. It shall be the duty of the state board of equalization to sit for a portion of its allotted time in

the western division of the state and in the eastern division of the state in addition to its sessions at Nashville, the time and place of the sessions to be held at other points than Nashville to be designated by the state board, and publication of such time and place or times and places to be made through the press. In selecting points for its meetings at places other than Nashville, the state board shall select such places as will be most convenient to the taxpayers. Taxpayers and property owners without further notice than this statute, and the publication of the times and places of the meeting of the board as required herein are charged with notice of said session. Said sessions shall continue from time to time and day to day, until the equalization of all assessments is completed. (1921, ch. 113, sec. 7; 1923, ch. 7, sec. 25.)

SECTION 1450.

1450. *Taxpayers may complain of inadequacy and inequality of assessments, how and when.*—Any taxpayer, or any owner of property subject to taxation in the state, shall have the right to a hearing and determination of any complaint he may make on the ground that other property than his own has been assessed at less than the actual cash value thereof, or at a less percentage of value than his own property or other property or that his own property has been assessed at more than its actual cash value, but such complaint shall be specific, in writing, and sworn to and filed with said board at least ten days before the adjournment of the annual session. (1919, ch. 1, sec. 7; 1921, ch. 113, sec. 9.)

SECTION 1451.

1451. *Equalization to be made, how; false evidence perjury.*—Said board shall receive, and consider, all complaints and reports made to it, together with the evidence submitted therewith; and shall equalize, compute, and fix the value of all such properties within its jurisdiction by the standard of the actual cash value of same, and, for said purposes, said board shall have the power, and it is made its duty to reduce or increase, values and properties so that the values of all assessments when so equalized shall conform to said standard of actual cash value. Equalization of such properties may be made by said board, by reducing or increasing, the values thereof, by classification of property, or by wards, civil

districts or counties or in such manner as will enable the board to justly and equitably equalize assessments in conformity with said standard. A false statement of fact, either in an affidavit deposition made or taken under the provision of this law, to be filed with, and acted upon by said board or said commissioner, shall be perjury, and the one guilty punished therefor, as in other cases of perjury. (Ib., sec. 10; 1919, ch. 1, sec. 8.)

SECTION 1456.

1456. *Board to equalize all property assessments, including appeals of merchants; action of board is final.*—Said state board shall have jurisdiction of, and it shall be its duty, to equalize during its session the assessments of all properties in the state, including any appeals which may be filed by merchants from the action of the superintendent of taxation. The action of the state board shall be final and conclusive as to all matters passed upon by said board, subject to judicial review; and such taxes shall be collected upon the valuation found and fixed by said board. (1921, ch. 113, sec. 14; 1919, ch. 1, sec. 10; 1923, ch. 7, sec. 25.)

SECTION 1462.

1462. *Liberal construction in favor of jurisdiction of superintendent and state board of equalization; incidental powers.*—It is declared to be the legislative intent that this law be liberally construed in favor of the jurisdiction and powers conferred upon the superintendent of taxation; and upon the state board of equalization. The superintendent and/or board shall have and exercise all such incidental powers as may be necessary to carry out and effectuate the objects and purposes of this law, to equalize the assessment of all properties subject to taxation. (1921, ch. 113, sec. 20; 1919, ch. 1, sec. 16, Modified.)

SECTION 1463.

1463. *Superintendent of taxation full-time officer.*—Superintendent of taxation shall give his entire time to the work of gathering evidence and compiling same and making reports to the board. (1919, ch. 1, sec. 2.)

SECTION 1467.

1467. *Board may require reports to equalize assessments.*—The board shall have the power to require the superintendent of taxation and any other agent or assistant employed to submit such facts and reports as may be deemed necessary to enable said board to equalize assessments on property of the various classes and in the different localities of the state, and otherwise prescribe his duties and powers. (1919, ch. 1, sec. 4; 1923, ch. 7, secs. 2, 19, 24, 25.)

SECTION 1472.

1472. *No other compensation; oath to be taken and filed.*—It shall be the duty of the members to discharge the duties of said board without compensation, save such expenses, but before entering upon the discharge of such duties, they shall take and subscribe to an oath that they will fairly and impartially perform the duties imposed upon them by this article, and equalize, fix, and compute the values of all properties within their jurisdiction, so that the value thereof shall conform to the standard of the actual cash value of the same. Said oath shall be taken before some person authorized by law to administer an oath and be filed in the office of the secretary of state for preservation. (1907, ch. 602, sec. 37, subsec. 2.)

SECTION 1478.

1478. *Powers and duties of the superintendent.*—The superintendent shall have the following powers and shall perform the following duties in addition to such other powers and duties as may be conferred and imposed upon said superintendent by law. (1921, ch. 113, sec. 2.)

(1) *To have and exercise general supervision over the administration of the assessment and tax laws of the state; to confer with and advise county tax assessors, county boards of equalization and other county officials in the performance of their duties in administering the assessments and tax laws of the state, to the end that all assessments of property be made relatively just and equal at the actual cash value of said property in substantial compliance with law.*

(2) *Rules and regulations.*—The superintendent is vested with power to prescribe rules and regulations not inconsistent with law and prepare such forms as he may deem proper for the administration of the duties of his office and for the use and government of county tax assessors and county boards of equalization.

(3) *To obtain evidence, information, and statistics relative to the value of property to be assessed and equalized;* to regulate and prescribe the mode of taking evidence, whether by affidavit, deposition, or otherwise; to send for papers and witnesses; to compel the attendance of witnesses and to administer oaths and to perform such other acts as may be necessary, to carry out the provisions of law; to have and exercise all the powers of commissioners or clerks of courts in taking depositions, and to issue subpoenas for witnesses and to place same in the hands of any executive officer in any county in the state whose duty it shall be forthwith to execute same and make due returns thereof.

(3a) *Compensation for serving process, etc.*—Witnesses and sheriffs or constables executing process issued by the superintendent or the state board of equalization, shall receive the same compensation as is fixed by law for like services for a court of record.

(4) *Assessors to report; superintendent to furnish them forms and tax schedules.*—To require assessors to furnish reports when called for by the superintendent, giving specific information relating to assessments and other facts concerning properties and facts pertaining to the administration of the duties of the office of tax assessor. Said superintendent shall prepare and furnish to the various tax assessors all forms necessary for them to furnish the required information and shall also prepare and furnish to assessors tax schedules conforming to the different classifications of assessments.

(5) *Assessments at actual cash value.*—It shall be the duty of the superintendent to procure the assessment of all property in the state at the actual cash value thereof, and said superintendent is required to exercise all powers herein conferred upon him to that end.

(6) *Corporations, list of, showing what.*—The superintendent shall keep in his office a complete list of all the corporations in the

State of Tennessee, whose property is subject to assessment by county tax assessors; said record to show the name of each corporation, location, chief office or situs, authorized capital stock, outstanding capital stock, value of corporate property and such other facts as may be necessary to secure an actual cash value assessment of all property belonging to such corporations.

(7) *Corporation forms to be filled out; failure is a misdemeanor; fines.*—The superintendent shall prepare forms and blanks to be furnished each such corporation in the state, and it shall be the duty of said corporations to fill out such forms and file same with the superintendent under oath, and furnish all facts called for therein and such other facts as the superintendent may deem necessary. Any corporation failing or refusing to file said form or furnish said information called for by the superintendent, within thirty days after said forms are furnished said corporation or said request for said information is made, shall be guilty of a misdemeanor, and upon conviction be subject to a fine of not less than fifty dollars or more than two hundred and fifty dollars.

(8) *Superintendent to furnish county tax assessors abstracts of corporations; duty of commissioner of finance and taxation; review of his action.*—It shall be the duty of the superintendent to audit in his office all tax returns filed by said corporations, and to determine the proper assessment of each such corporation so far as possible. From the information thus obtained, it shall be the duty of the superintendent to furnish to the respective tax assessors of the respective counties of the state and to the chairman of the county boards of equalization, in an abstract or summarized form, the facts pertaining to each corporation as disclosed by the sworn return so made by said corporation. It shall be the duty of the chairman of the county boards of equalization to return said summary or abstract with a statement thereon, showing the amount assessed by said county board of equalization against such corporation within twenty days after the assessment is made by the county equalization board. It shall then be the duty of the commissioner of finance and taxation to compare the assessment so made by the county equalization board, as appears from said summary when so returned, with the return of the corporation made under oath, and if it appears that such assessment is less or more than it should

have been fixed by the county board of equalization, the commissioner of finance and taxation shall have the power to increase or decrease said assessment so as to conform to the amount disclosed by the said sworn return of such corporation, or to make such increase or decrease as in his judgment is deemed proper. But no increase shall be made until after notice has first been given to such corporation to appear either in person, or by brief filed, or by attorney, at the office of the commissioner of finance and taxation on or by a date fixed in said notice to show cause why such increase should not be made. It shall then be the duty of the commissioner of finance and taxation, where an increase or decrease has been made, to certify the action of the department to the trustee of the county, and said assessment, when so certified, to become the legal assessment against such corporation and so entered on the records of the county trustee; provided, however, that the state board shall have the power to review, on appeal, the action of the commissioner of finance and taxation in making such increase or decrease. (Ib.; 1925, ch. 106.)

(9) *Report to state board of equalization as to assessment in the various counties.*—The superintendent shall make an annual report to the state board of equalization when it meets in its annual session and shall lay all facts assembled by the superintendent with respect to the assessments in the counties in the state before said state board for its consideration, and shall make such recommendations to the state board as he deems necessary to enable it to equalize the assessment of all classes of property.

(10) *Tax laws to be studied; report and recommendations to legislature.*—Said superintendent shall make a careful study and investigation of the tax laws of other states. It shall be his duty to prepare and transmit to the general assembly on the first day of its biennial session, a report of his work and the work of the state board of equalization, and shall make such recommendations as he may deem best for the interest of the state. (1921, ch. 113, sec. 2; 1925, ch. 106.)

SECTION 1508.

1508. *Assessment of said properties for state, county and municipal purposes.*—The railroad and public utilities commission, hereinafter called the commission, are authorized and directed to assess

for taxation, for state, county and municipal purposes, all of the properties of every description, tangible and intangible, within the state, belonging to the following named persons, hereinafter referred to as companies, namely: (1) railroads; (2) telephones; (3) telegraphs; (4) sleeping cars; (5) freight cars; (6) street cars; (7) power, whether hydroelectric, steam, or other kinds, for the transmission of power; (8) express; (9) pipe lines; (10) gas companies; (11) electric light companies; (12) motor bus and/or truck, and (13) water companies. The commission shall assess all of said property biennially in even years at its actual cash value as of the same date the properties of other persons are by law assessed; provided, this statute shall not apply to corporations organized under the laws of Tennessee whose principal business is the manufacture of products of the soil of Tennessee and who for the transportation alone of such products furnish their own cars. (1919, ch. 3, sec. 1; 1919, ch. 49, sec. 1; ch. 160; sec. 1; 1920, ex. scs., ch. 18, sec. 3.)

SECTION 1509.

1509. *Owners to file sworn schedules and statements of certain information.*—It shall be the duty of the owners of property mentioned in the preceding section, within the state, to file with the commission on or before the first day of April, biennially, in the even years, under oath, schedules and statements giving the following information; concerning all properties owned or leased by such owners: (1) the name of the company, its nature, whether a person, association, copartnership, corporation or syndicate, and under the laws of what state or country organized; (2) the location of its principal place of business, the post office address of the president, general manager, or executive officer or officers; (3) the name and post office address of the chief officer or managing agent of the company in Tennessee; (4) the gross receipts of its business as a whole and also of its business done within the state, and operating expenses for the preceding fiscal year; (5) the total capital stock, number of shares issued or outstanding, the par face value thereof, and in case no shares of stock are issued, in what manner its capital is divided, and its holdings evidenced; (6) the market value of said shares of stock or capital on the 10th day of January next preceding, or if said stock or capital have no market value, then the actual value; (7) the real estate, buildings, machinery, fixtures, appliances

and personal property owned by said company which is actually located within this State, the actual value thereof and the counties or municipalities in which the same are located; (8) real estate, together with the permanent improvements thereon, situated outside of the state and not directly used in the conduct of the business within the state, the purpose for which it is used, its value and the sum at which it is assessed for taxation in the locality where situated; (9) the bonded indebtedness and the market value thereof, if it has such, otherwise its actual value. (1919, ch. 3, sec. 2; 1919, ch. 160, sec. 2.)

SECTION 1526.

1526. *Assessment at actual cash value, ascertained from what.*—Upon examination of every such schedule and statement and all other evidence taken by them, the said commission shall proceed to ascertain and determine the value of said property within the state for taxation and assess the same accordingly, taking into consideration the capital stock, corporate property, franchises, and gross receipts, the market value of the shares of stock and bonded indebtedness, and such other evidence as is afforded by said statements and schedules or other evidence taken to enable them to fairly and equitably fix the actual cash value of the properties of such persons. (1919, ch. 3, sec. 4.)

SECTION 1533.

1533. *Assessments to be completed, when; exceptions, and hearing thereon; assessments to be filed with board of equalization, when.*—Said assessments shall be completed on or before the first Monday in August, and within ten days from the first Monday in August, the owner of any property assessed may appear and file exceptions to said assessment, together with such evidence as they may desire to submit as to the value of the property assessed, and at the expiration of said ten days, said commission shall reassemble and examine such additional evidence and exceptions as may have been filed, and act thereon, either changing or affirming their valuation. And on or before the first Monday in September, said commission shall file with the board of equalization the assessments made by them, together with such records as may be deemed necessary. (1919, ch. 3, sec. 9.)

SECTION 1534.

1534. *Valuation increased or diminished by board of equalization; additional evidence required; board may itself investigate and procure evidence; expense, how paid.*—The state board of equalization shall proceed to examine said assessments so made by the commission, and they are authorized to increase or diminish the valuation placed upon any property valued by said commission, and are further authorized to require of said commission any additional evidence touching one or more of the properties assessed, and shall consider such additional evidence so furnished in fixing the correct value of any property so assessed, and said assessments shall not be deemed complete until corrected and approved by the said board of equalization; and the governor is authorized to call said commission at any time to perform the duties imposed upon them; provided, however, that if said board of equalization shall so desire, they shall have the power without referring any assessment to said commission, themselves to employ experts, accountants, and to call witness to testify upon any assessment certified to them by said railroad commission; and said board of equalization shall have the same powers to compel attendance of witnesses, production of books, papers, and documentary evidence as is by this statute given to said commission. Said board of equalization shall have the right to call upon the interstate commerce commission for any valuations of property in the office of the interstate commerce commission and evidence in possession of said commission in support of such valuations.

All of the evidence thus acquired by said board of equalization shall be considered by them in addition to the evidence transmitted to said board by said commission in support of the assessment so fixed by said commission.

Any expense incurred by said board in calling for the additional proof as to the value of any property certified to them by said commission shall be by said board of equalization certified to the state comptroller and paid by him out of any moneys in the treasury not otherwise appropriated. (1919, ch. 3, sec. 10; 1920, ex. ses., ch. 18, sec. 1, 1923, ch. 7, secs. 19, 25.)

SECTION 1535.

1535. *Board to certify the valuations fixed which shall be final and conclusive.*—On or before the third Monday in October, said board of equalization shall certify to the commission the valuation fixed by it upon each property assessed under this law, and the action of the board of equalization in fixing the valuation upon such property shall be conclusive and final and the valuation so fixed shall be assessed against said property and the taxes due thereunder be paid. (1919, ch. 3, sec. 11; 1921, ch. 39.)

1. ASSESSMENT OF PETITIONER'S PROPERTY BY RAILROAD AND PUBLIC UTILITIES COMMISSION OF TENNESSEE.

From Record, pp. 33-38.

"THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY BEFORE THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, NASHVILLE.

IN RE:

Assessment of the property returned by the NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY for the purpose of taxation for the years 1938-1939.

HISTORY.

The Nashville, Chattanooga and St. Louis Railway Company was chartered under Chapter I of the Acts of the General Assembly of the State of Tennessee, 1845 and 1846, approved December 11, 1845. The organization of the company was perfected January 24, 1848, and by decree of the Chancery Court of Nashville, Tennessee, May 31, 1875, the name of the corporation was changed to 'The Nashville, Chattanooga and St. Louis Railway' which railway built, purchased or leased the different lines now being operated by it. In making this assessment due consideration will be given to each of the several railroads organized under separate charters and now forming a part of the Nashville, Chattanooga and St. Louis Railway.

	Main Line
Miles of road owned	748.63
Miles leased	366.72
Miles trackage rights16
Total	1,115.51

DISTRIBUTION OF MAIN LINE MILEAGE, OWNED OR LEASED BY STATES

State	Number of Miles	Per Cent
Tennessee	800.02	71.73
Alabama	113.30	10.15
Georgia	142.27	12.75
Kentucky	59.76	5.37
	<hr/> 1,115.35	<hr/> 100.00%

The mileage of main line owned and leased in Tennessee by divisions and the total mileage of main line of said divisions is as follows:

	Mileage in Tennessee	Total Mileage of Division
Chattanooga Division	124.87	151.71
Northwestern Division	160.99	171.51
Western and Atlantic	15.45	136.85
Paducah and Memphis	180.63	229.87
Shelbyville Branch	8.44	8.44
McMinnville Branch	60.86	60.86
Columbia Branch	85.78	85.78
Huntsville Branch	2.58	80.48
Tracy City Branch	39.18	39.18
Sequatchie Valley Branch	54.78	57.68
Orme (Dorans Cove) Branch	2.03	10.42
Centreville Branch	60.78	60.78
West Nashville Branch	3.65	3.65
Rome Branch		18.14
	<hr/> 800.02	<hr/> 1,115.35

SIDE TRACK MILEAGE

State	Miles	Per Cent
Tennessee	380.66	70.31
Alabama	45.30	8.37
Georgia	97.91	18.09
Kentucky	17.51	3.23
Total	541.38	100.00%

ROLLING STOCK

The Corporation reports the value of its rolling stock of \$7,618,129, which amounts to \$6,829.27 per mile of road operated. The Corporation reports that 69.27% of its rolling stock should be allocated to Tennessee.

The corporation operates 1,115.51 miles of main track of which .16 miles is trackage rights and 366.72 miles is leased, leaving only 748.63 miles owned by it and upon which its securities rest and in which its stockholders have an equity. 136.85 miles of track belongs to and is leased from the State of Georgia. It is not bonded and stockholders have no equity in the property other than the value of the leasehold. 229.87 miles of track belongs to and is leased from the Louisville and Nashville Railroad Company. It is mortgaged by bonds issued by the Louisville and Nashville Railroad, first by a first mortgage bond of \$4,619,000 and then by a second mortgage of an indeterminate amount. Of the 800.02 miles of main track returned for taxation in Tennessee only 603.94 miles are owned by The Nashville, Chattanooga and St. Louis Railway.

BONDS

The bonded indebtedness resting upon the property returned by respondents for the purpose of taxation is:

Property owned	\$16,800,000
Equipment	840,000
Paducah and Memphis Division	4,619,000
One-half of L. & N. Terminals, Nashville	1,250,000
	<hr/>
	\$23,509,000

The Western and Atlantic Division (136.85) belongs to the State of Georgia and is not bonded. Respondent leases the Western and Atlantic Railway (136.85 miles) from the State of Georgia at an annual rental of \$540,000 and agrees to expend an average of \$60,000 per annum in improvements and betterments, all such improvements and betterments to become the property of the State of Georgia, which arrangement is equivalent to an annual rental of \$600,000. Based upon this rental charge the corporation has in the past valued this line at \$10,000,000.

The Nashville, Chattanooga and St. Louis Railway also guarantees by endorsement or by agreement with other railroads the following bonds of other companies.

L. & N. Terminal Co. (Nashville)	\$2,601,000
Memphis Union Station Co.	2,500,000
Paducah & Illinois R. R. Co.	2,587,000

STOCK

The capital stock of the Nashville, Chattanooga and St. Louis Railway is \$25,600,000. No dividends paid since 1931.

The company gives the value of its stock based upon quotations for January 10, 1937, as \$3,712,000.

The stockholders have no equity in the leased lines other than the value of the leaseholds. In the stock value is reflected the value of certain non-taxable securities and holdings which will be given due consideration.

EARNINGS

Year	Railway Operating Revenue	Net Railway Operating Income	Other Income	Net Income
1938 (3 mo.)	\$ 3,322,810	\$ 199,058	\$ 55,201	D \$133,415
1937	14,299,433	840,290	243,456	D 471,623
1936	14,145,656	1,382,842	227,453	51,999
1935	12,301,461	523,010	232,295	D 791,460
1934	12,733,702	953,544	243,693	D 351,939
1933	12,381,088	992,602	284,919	D 292,326

NON-OPERATING PROPERTY

The corporation owns property which it returns for taxation and which is not used in the service of railway operating income of the Corporation. The corporation returns for taxation property which it does not own, the value of which is not included in its bonds or its stock certificates or is in any way reflected in its net Railway Operating Income, is not used in the service of transportation and a large portion of which is business property located in the city of Chattanooga.

SECURITIES AND CHOSES IN ACTION ON HAND JANUARY 10, 1938

Situs in Tennessee	\$2,585,286
Situs outside Tennessee	1,149,471

Included in those securities in Tennessee is an amount of \$1,058,724 representing U. S. Treasury Bonds.

FRANCHISE

The corporation was asked to give the value of its franchise and the method by which said value was arrived at, which it failed or refused to do, claiming that there was no known rule or method by which its value could be determined.

LOCALIZED PROPERTY

The corporation reports the value of its localized property as follows:

	Localized Property, Leased Rail, etc.
Outside Tennessee	
Alabama	\$ 215,029
Georgia	2,360,522
Kentucky	101,670
	<hr/>
	\$2,677,221

We find the value of such localized property in Tennessee as returned by the corporation to be \$3,297,250

CORPORATE PROPERTY

Final valuation as made by the Interstate Commerce Commission	\$69,262,132
Additions and betterments since valuation date, January 30, 1916	11,840,601
Equipment	7,618,129
	<hr/>
	\$88,720,862

In valuing the property of the corporation for the purpose of taxation we will look to and consider the capital stock, corporate property, franchise and gross receipts, the market value

of the shares of stock and bonded indebtedness and all evidence as are afforded by the returns, statements and schedules made by the respondent, together with such other evidence taken as to enable this Board to fairly and equitably fix the actual cash value of the property to be assessed, making due allowance for all non-taxable securities held.

CONCLUSIONS

Value of entire property. (1,115.35)	\$23,996,604.14
Less localized property	5,974,471.00
Value entire distributable property	18,022,133.14
Value per mile distributable property	16,158,276.00
Value distributable property in Tennessee	
(800.02)	12,926,944.00
Less legal exemption (\$1000)	12,925,944.00

This Board in distributing this value over the different railroads, lines, divisions and branches in Tennessee, now forming a part of the Nashville, Chattanooga and St. Louis Railway, will look to and consider the character and value of the different railroad lines, divisions and branches, capital stock, corporate property franchise and gross receipts and the market value of the shares of stock and bonded indebtedness, as well as to the intangible value due to the organic relation of the different railroads, lines, divisions and branches to the systems as a whole. The company failed or refused to report the original cost or book value separately and in considering these items, we can only use our judicial knowledge of conditions as we find them.

DISTRIBUTION

Division	Miles	Value	
		Per Mile	Total
Chattanooga Division	124.87	\$37,200	\$ 4,645,164
Northwestern Division	160.99	21,800	3,509,582
Western and Atlantic	15.45	37,200	574,740
Paducah and Memphis	180.63	14,300	2,583,009
Shelbyville Branch	8.44	3,300	27,852
McMinnville Branch	60.86	5,300	322,558
Columbia Branch	85.78	5,300	454,634
Huntsville Branch	2.58	3,300	8,514
Tracy City Branch	39.18	6,300	246,834
Sequatchie Valley Branch	54.78	5,500	301,290
Orme (Dorans Cove) Branch	2.03	3,300	6,699
Centreville Branch	60.78	3,300	200,574
West Nashville Branch	3.65	12,190.14	44,494
Total	800.02		\$12,925,944
Aug. 22, 1938."			

2. OPINION OF STATE BOARD OF EQUALIZATION APPROVING ASSESSMENT.

From Record, pp. 100-102

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
Plaintiff in Error,

vs.

GORDON BROWNING, ET AL.,
Defendants in Error.

N., C. & ST. L. RAILROAD COMPANY APPEAL.

This appeal from the assessments made by the Public Utilities Commission, of the properties of the Company, located in Tennessee, was heard by the State Board of Equalization, upon the record as presented to said Commission, the exceptions filed to its assessment, additional affidavits, charts and reports of company officials, argument of counsel and of representative of the Commission, and the entire record, and it is now before us for determination.

This appeal presents to the Board a difficult problem. Each member is *ex officio*. Therefore, adequate time is not ours to give the necessary investigation to entirely satisfy even ourselves, that we may reach an equitable conclusion. However, the responsibility is ours and we would not shirk it.

The exceptions filed are many, and are based upon every method known to the law, touching the valuation and assessment of railroad property, as well as the method used by the Commission, in fixing the assessment.

The assessment made by the Commission, for the years less than the assessment made for the previous years of 1936:

37, and from such former assessment the Company has appealed. The records of the Commission further disclose, that previous assessment of companies property, over a period of ten years follow:

1923-1924	\$24,000,000.00
1925-1926	24,795,303.00
1927-1928	24,795,303.00
1929-1930	26,000,000.00
1931-	23,750,000.00
1932-1933	17,000,000.00
1934-1935	16,999,966.00

The record before us shows that the Company agreed to the assessment made for the years 1936-1937. It will be seen, that the assessment made for the year of 1938-1939, is a substantial reduction from the high of 1929-1930; indeed, a reduction in the sum of \$9,776,806.00. We are convinced that this reduction of companies assessment from the high point in recent years, is comparable with the reduction enjoyed by owners of other property, or any class of property, within the bounds of this State.

The Company objects to the method used by the Commission in reaching the valuation of its property. It appears in the record, and it was stated in argument, that the Commission, in reaching its conclusion, looked to the capital stock, corporate property franchises and gross receipts, the market value of the shares of stock and bonded indebtedness, and all evidence as afforded by the returns, statements and schedules made by the Company. We assume that their statements are true, and we understand that these elements must be used, as a matter of law, in making such assessments.

Another objection is raised by the Company. That is, the governmental units throughout the State assess other property at less than its actual cash value, while in the same juris-

diction, the Commission assessed its property at its actual cash value, thereby violating the Constitution, on the subject of taxation. The affidavits of William H. Pouder, who is Executive Secretary of the Tennessee Taxpayers Association, and who has compiled a great deal of data on actual cash values, and assessed values of property in the various counties of the State. This information is very interesting, but we are not familiar with the method used by him in reaching his figures on actual cash value, nor do we know how the percentage of cash value was reached for assessable purpose. Many other affidavits are in the record purporting to establish that theory, but we think they are subject to the same objection as that of Mr. Pouder.

For the foregoing reasons, we are satisfied that the assessment of companies property is just and fair to it, and in line with all other like property within the State.

This assessment of companies property at \$16,223,194.00 will stand.

Neither Governor Gordon Browning nor Commissioner Walter Stokes, Jr., participated in the hearing of this appeal.

(Signed) A. B. BROADBENT

KEATON & EDWARDS CONCUR.

3. OPINION OF THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE.

From Record, p. 80

THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY

vs.

GORDON BROWNING, ET AL.

The effect of the writ of *certiorari* was to bring up the entire record for review by the Circuit Court.

We can consider only the facts shown in the certified record to determine if the Public Utilities Commission acted illegally, fraudulently, or exceeded its authority in assessing the petitioner's property. There is no point in asking that the motion by defendant be overruled and the case heard on its merits. In passing upon the motion the Court considers the allegations in the petition and the facts shown in the record. The merits are fully considered in passing on the motion. Should the Court overrule the motion and require the defendant to answer, all that could be stated in an answer would be "Here is the record. We are compelled to, and do, rely upon the record, which is evidence of the fact that there was a legal assessment."

Upon full consideration of the petition, the record in the case and the motion, oral argument of counsel and briefs filed by the counsel, I am constrained to sustain the defendants' motion.

The Court sustains paragraphs Nos. 3, 4, and 5 in the original motion of the defendant State Board of Equalization. Overrules other grounds of the motion.

The Court sustains the amended motion, except ground No. 8, to the effect that the Circuit Court is without jurisdiction, etc., which is overruled.

A. B. NEIL, Judge.

4. **OPINION OF THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE, ON MOTIONS FOR NEW TRIAL.**

From Record, pp. 81-88.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY

vs.

GORDON BROWNING, ET AL.

There is no question in my mind but that the Circuit Court has the power to review the action of the Board of Equalization and the Public Utilities Commission in determining the value of petitioner's property for the assessment of *ad valorem* taxes. The common law writ of *certiorari* was issued to bring up the record to review the action of these respective Boards and determine the legality of the assessment. This Court has no authority to fix a valuation of petitioner's properties.

Upon the hearing the counsel for petitioners (defendants) moved the Court to dismiss the petition upon several grounds. First, there was no showing upon the record certified to this Court that either the Railroad and Public Utilities Commission or State Board of Equalization "exceeded their jurisdiction, acted illegally, or acted fraudulently," and that the action of said State Board is final and conclusive and not subject to review by the Courts. I will discuss the motion generally.

It is my judgment that the action of the State Board is subject to review, but the only power which the Court has is, as above stated, to determine whether or not the Board "exceeded their jurisdiction, acted illegally, or acted fraudulently."

In determining this question it was clearly within the province of the Court to consider the entire record in passing on the defendants' motion.

Edde v. Cowan, 33 Tenn., 293-294, 6 Heisk., 601.

11 Corpus Juris, p. 189, Sec. 329.

There is nothing in the record to show that the Board acted illegally, or fraudulently or exceeded its jurisdiction unless such conclusion can be found in what is alleged to be overvaluation as compared with the value of other property by the various political subdivisions of the State, or the method of determining the value of petitioner's property, or the valuation so fixed was so grossly excessive as compared to other property as to indicate a fraudulent design. The constitution provides that all property shall be assessed at its cash value, and, of course, the Assessors of the various political subdivisions of the State, as well as the Railroad Commission and State Board of Equalization must comply with this provision. There is no authority granted to classify property. The law provides the way and manner in which the value of railroad property shall be determined. It is the duty of the Board to comply, or near as possible, with the Statute. Value is a thing not easy to determine. Men will differ when applying the methods prescribed by Statute to determine value, as to what the cash value of any property may be. There are many who insist that property yielding no income is without any real value. We know there are vast properties and business enterprises that are conducted every year at a loss. Mr. Roger Babson recently stated that "out of a list of 1200 stocks listed on the N. Y. Stock Exchange less than one-fourth paid any dividend." We know there are thousands of acres of idle land in Tennessee, as well as other properties, that are being carried by owners at a dead loss. While this is true yet all must admit that these properties have value. The various stocks

mentioned by Mr. Babson have value, and doubtless much greater value than the quotations would indicate. The fact that a dividend is not paid does not indicate even little value. This Court, in passing upon the official acts of the defendant Boards, must presume that the said Boards complied with the law, not only as to methods of determining value but that the result reached by them was lawful. I think it is a basic rule of law that illegality of conduct is never presumed. Surely fraud is never presumed in any Court except where the parties occupy a fiduciary relationship.

It is my judgment, based on the record, that the Public Utilities Commission substantially complied with the law in methods of determining value. I think I have the right to assume that the Board pursued the same method in determining the valuation of other railroads and public utilities in Tennessee. It is unthinkable that a different, and I might say an illegal, method would be adopted as to each of the properties assessed by the Commission. It is contended by petitioner that the assessment is fraudulent, or, to state it in fairer terms, the over-valuation as compared with other properties in the state produces fraudulent results, and is therefore in violation of petitioner's constitutional rights.

If the Court is to consider the value of the petitioner's property as compared with the assessed value of other property (and I look to the entire record as to that) I must compare the present assessment with former assessments in determining if the defendant Boards acted arbitrarily and capriciously, or otherwise.

The record shows a reduction in assessment of approximately (\$10,000,000.00) ten million dollars within recent years.

When I heard a similar case several years ago, in which petitioner sought a review of the action of the Public Utilities

Commission in assessing its property, the record showed an increase of approximately double what it had been. I held that such an increase could not be justified and that the record sent up for review fully supported petitioner's contention. While I think (this is my personal conviction) that in recent years all railroads have suffered, due to unfair competition, six or eight years of economic stagnation, the demoralization resulting from government control, yet the courts cannot correct all the wrongs and injustices complained of, nor act as a supervisor of governmental agencies, except to keep them within the limitation of their authority as prescribed by law. All property has decreased in value in recent years, and there has been a decrease in assessment for taxes, including the property of the petitioner.

With the Assessors of the various political subdivisions of the State acting independently of each other and all acting independently of the State Boards of Assessors (Public Utilities Commission) and the State Board of Equalization, I am at a loss to see how there can ever be a proper assessment, that is from a technical legal standpoint.

I can clearly see how that County Assessors in certain counties through which a railroad passes, would place a low valuation on local property and fix a high rate of taxation, knowing or at least believing, that the main cost of county government would be met with taxes from the railroads which were compelled to pay the same high rate upon a one hundred per cent valuation. I cannot say from the record that this is taking place in the instant case, and that the defendant Boards have wilfully connived at it and condoned it. It is suggested in argument of counsel that such practices are being resorted to. The only proof of it is the affidavits of certain individuals that property in certain counties are given a low assessment. It is doubtful in my mind if the County Assessors know how to

determine "cash value" within the meaning of the law. I do not find in any affidavit anything to indicate just how these affiants determined the question of "cash value," or that, in any instance they applied a proper rule of law in arriving at the "cash value" of property.

Every affidavit on file as to valuation represents the opinion of affiants. It may be the opinion of an expert or non-expert. The defendant Boards must have considered and weighed the value to be given these opinions. I have no right to assume they were arbitrarily disregarded. Is it the duty of this Court to say what value should be given to these opinions, and that the defendant Boards did not attach the proper value to such testimony. I think not. Considering the entire record there has doubtless been an under-valuation of property in some localities. The defendant Boards may have been guilty of an error of judgment in placing a proper value upon petitioner's property. But, as said by the U. S. Supreme Court in the case of *Rowley v. Chicago and N. W. R. Co.*, 293 U. S., 293:

"Over-valuation resulting from error of judgment will not support a claim of discrimination. There must be something that amounts to intention, or the equivalent of fraudulent purpose to disregard the fundamental principle of uniformity."

In another case the same Court said:

"It is not enough in these cases, that the taxing officials have merely made a mistake. It is not enough that the Court, if its judgment were properly invoked, would reach a different conclusion as to the taxes imposed. There must be a clear and affirmative showing that the difference is an intentional discrimination and one adopted as a practice."

Chicago Great Western v. Kendall, 266 U. S., 94.

The petition avers that the assessment is illegal in that a proportion of the entire system value was allocated to Ten-

nessee solely by consideration of main track mileage. After a full review of the authorities cited by counsel for petitioner and the defendant, I think the weight of authority supports the contention of the defendants that mileage apportionment is valid. It is unnecessary that I refer to and discuss all the cases. The petitioner strongly combats the holding of the Court in the "Backus" case (154 U. S., 42) contending that it was decided at a time "when traffic and revenue statistics were in their infancy," etc., and then the Court stated "There may be exceptional cases." It can be readily seen that there may arise "exceptional cases," but the principle of legality has been so strongly affirmed in that case, and other cases, that I cannot depart from the holding.

The Court would not permit the taxing power to adopt the above method in any arbitrary and capricious manner. In order to invalidate the assessment there must be a clear and affirmative showing that the method adopted was so arbitrary as to indicate an intentional discrimination. Counsel refer to a statement by Mr. Justice Holmes in *Fargo v. Hart*, 193 U. S., 495, as follows:

"In the opinion he recognized that a division by mileage is justified 'so long as it may fairly be assumed that different parts of the line are about equal in value.' We should read this statement in connection with the decision of the Court in *Great Northern R. Co. v. Weeks*, 297 U. S., 135, 80 L. Ed., 552; in which the Court said:

" 'The problem of apportionment is a difficult one. It is impossible to formulate a rule generally applicable. Controlling conditions vary greatly from time to time. Allocations to be sufficiently accurate for practical purposes must be arrived at by the exercise of sound judgment based on facts that fairly reflect the relation between value of the system as a whole and value of the part within the state.' "

The foregoing is a sound statement of the law as to proper allocation. The Supreme Court of Tennessee used substantially the same language in *Franklin Co. v. Railroad*, 80 Tenn., 521-527.

The foregoing fully sustains the view that the assessment cannot be declared invalid on the ground of improper apportionment unless it affirmatively appears that there was a fraudulent design or purpose to disregard the "essential principle of practical uniformity."

It is the plain duty of the Public Utilities Commission to fix a valuation of petitioner's properties for assessment of *ad valorem* taxes, and the valuation so fixed should be "cash" value. If the defendant Board performed its legal duty, and valued the petitioner's property at a figure that represents a fair cash value, and the defendant Board of Equalization, after due consideration of the record and exceptions filed by petitioner approved such assessment, the Court is without power to enter an order or decree declaring to what extent, if any, there has been an overvaluation. This was expressly held in *Savage Co. v. Knoxville*, 167 Tenn., 642.

If, after assessing the properties of the various railroads and public utilities of the State at their respective cash values, it is made to appear that other property has been assessed in many political subdivisions of the State by local assessors, at 25%, 50% and 75% and, in some instances at 100%, the question then arises as to whether or not the Railroad and Public Utilities Commission should reduce the amount of its assessments so as to equal an average in percentage value with properties in the various counties that have been under assessed or illegally assessed. If this should be done, the State would find itself engaged in endless litigation with property owners, and a large part of State, County and City revenue would be tied

up indefinitely. In every county where property had been assessed at 75% or more, the property owners could appeal to the Courts for relief on the ground of lack of uniformity in assessment in violation of the Constitution, which provides that all property shall be assessed at its cash value. Surely every property owner paying upon a 100% valuation would be entitled to relief if legality of assessments is to be determined by making a comparison in valuations fixed by the various assessors throughout the State.

In the instant case, petitioners express a willingness to pay upon 75% of the present valuation, contending that this represents a fair cash value. The Court is without power to declare that this is a fair proposition and ought to be accepted. Again, if taxpayers can question the validity of every assessment on the ground of over valuation, and alleged lack of uniformity as compared with undervaluation of other property, and it is proper to fix a valuation by striking an average, it is a question as to when and how often a new average may be called for. The above statement of a vexatious problem is not in any way an exaggeration, and the problem is not new by any means. It was discussed by the U. S. S. Supreme Court in *Sioux City Bridge Co. v. Dakota County*, 260 U. S., 441. 67 Law Ed., 340 and other cases. There has been a great conflict in opinion as to what should be done. In such circumstances the problem being difficult of solution and there being no statutory remedy, it is not strange that there should be a diversity of opinion. Since the Court is without power to raise or reduce an assessment, that power being vested exclusively in numerous tax assessors and Boards of Equalization, we are confined to the one problem, to wit: whether or not the defendant Board exceeded its jurisdiction, acted illegally or fraudulently. In every case of alleged over valuation for assessment, the Court will not invalidate it, unless

there is "a clear and affirmative showing that the difference (in valuation) is an intentional discrimination, and one adopted as a practice." *Chicago & G. W. Railroad v. Kendall*, 266 U. S., 94, and cases cited.

The validity of the Act of 1939, which legislation is invoked and relied upon by defendant, was not fully discussed and briefed at the original hearing. It may be true that where a litigant has brought suit, seeking redress under rules of law then available, that the Legislature has no constitutional right to legislate him out of Court by an attempt to provide other remedies. It is unnecessary that I should discuss the validity or invalidity of this Act since I am constrained to overrule the motion for a new trial, holding, as I do, that the defendants' motion to dismiss, based upon other grounds, is well taken.

It is contended that if petitioner is required to avail itself of the remedy provided in the Act that it will work an intolerable hardship. Again, if the *supersedeas* is discharged and is not to remain in effect pending appeal that this will result in the same burden. I have no power or authority to purge the assessment of any portion that is alleged to be illegal. There is no authority for allowing the *supersedeas* to remain in effect as to a part of the assessment and discharge it as to the remainder. It is quite true that if petitioner must resort to separate suits, against the various political subdivisions of the state to recover illegal taxes paid or enjoin their collection, that it would be burdensome. At the same time we cannot close our eyes to the fact that if all public utilities in the state, as well as other taxpayers, should invoke the power of the Court and by the writ of *supersedeas* suspend the payment of all taxes until their legality had been finally determined, the State itself might suffer a grievous injury.

The briefs furnished by able counsel show an exhaustive investigation of the legal questions involved. The case has been given the most careful consideration. I cannot discuss in detail all of the cases cited, or review every argument that is advanced in support of petitioner and the defendant. To do so would require an opinion so long and elaborate that counsel would hesitate to read it.

The motion for a new trial is overruled and an appeal granted. The writ of *supersedeas* is abated and discharged. The petitioners are allowed (30) thirty days in which to perfect an appeal. The *supersedeas* will remain in effect during this time to enable the petitioner to make proper application to the Supreme Court for a modification of this Court's order with reference to the writ of *supersedeas*.

A. B. NEIL, Judge.

5. OPINION OF THE SUPREME COURT OF TENNESSEE.

From Record pp. 123-134

Davidson Law

THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY*Plaintiff in Error*

-vs.-

GORDON BROWNING, ET AL. (STATE BOARD OF
EQUALIZATION)*Defendants in Error*

OPINION.

The Nashville, Chattanooga & St. Louis Railway filed a petition for *certiorari* and *supersedeas* in the Circuit Court of Davidson County to review the action of the State Board of Equalization in fixing the value of petitioner's property for taxation. The trial judge dismissed the petition and an appeal has been taken to this Court.

The Railroad and Public Utilities Commission is directed by statute (Code 1508) to assess for taxation, for state, county and municipal purposes, all of the property of every description, tangible and intangible, within the state, belonging to railroad companies and other named public utilities. It is provided that the Commission shall assess all of such property biennially, in even years, at its actual cash value as of the same date the properties of other persons are by law assessed. The owners of property assessable under the statute are required by Code 1509 to file with the Commission sworn schedules and statements of certain information.

Section 1526 of the Code is as follows:

"Upon examination of every such schedule and statement and all other evidence taken by them, the said commission shall proceed to ascertain and determine the value of said property within the state for taxation and assess the same accordingly, taking into consideration the capital stock, corporate property, franchises, and gross receipts, the market value of the shares of stock and bonded indebtedness, and such other evidence as is afforded by said statements and schedules or other evidence taken to enable them to fairly and equitably fix the actual cash value of the properties of such persons."

The railway filed its return with the Commission, and after considering the same, together with other evidence, the Board fixed the cash value of the railway's property in Tennessee, for taxation, at \$16,223,199.00, for the biennium 1938-39. The railway filed numerous exceptions to the assessment, which were denied after a full hearing, and the railway prayed and was granted an appeal to the State Board of Equalization. The statute (Code 1533) provides that the Commission shall file with the Board the assessments made by them, together with such records as may be deemed necessary. Section 1534 provides that the Board shall proceed to examine the assessments so made, and are authorized to increase or diminish the valuation placed upon any property valued by the Commission, and are further authorized to request of the Commission additional evidence touching the property assessed; that if the Board so desire, they have the power, without referring any assessment to the Commission, themselves to employ experts, accountants, and to call witnesses to testify upon any assessment certified to them by the Commission, and to call upon the Interstate Commerce Commission for any valuation of property in the office of such Commission; that the assessments shall not be deemed complete until corrected and

approved by the Board. Under Code Section 1535, the Board is required to certify to the Commission the valuation fixed by them upon each property assessed, and the action of the Board "in fixing the valuation upon such property shall be conclusive and final and the valuation so fixed shall be assessed against said property and the taxes due thereunder be paid."

The Board reviewed the assessment of the railway's property and approved the same. Before the Board certified back to the Commission the amount of the assessment, as approved, the railway filed its petition for writs of *certiorari* and *supersedeas* in the Circuit Court of Davidson County. The circuit judge, upon motion of the Board, taking into consideration the entire record as certified to the circuit court by the Board, dismissed the petition and discharged the *supersedeas*. From this action of the circuit judge, the railway has appealed to this Court and made numerous assignments of error. The railway in the presentation of its case, has not followed seriatim the assignments of error. As a matter of convenience we will follow the same course.

The railway complains, in the argument contained in its brief, that "The assessment is not supported by any evidence; is grossly in excess of the value of the property as established by the evidence; was made by methods not calculated to produce a fair and just result and therefore arbitrary and illegal; and was made in violation of the provisions of the statutes controlling the assessment of railroad property."

The assessment made by the Board is made final and conclusive by statute (Code 1535) and is not open to review by the courts on *certiorari*, where the Board has not with reference to the assessment, exceeded its jurisdiction or acted illegally or fraudulently. *Tomlinson v. Board of Equalization*, 88

Tenn., 1, 12 S. W., 414; 6 L. R. A., 207; *Anderson v. Memphis*, 167 Tenn., 648; *Treadwell Realty Co. v. City of Memphis*, 173 Tenn., 168, 116 S. W. (2d.) 997. In *Savage v. City of Knoxville*, 167 Tenn., 642, it was held that value placed on property for taxation by duly constituted taxing authorities is not reviewable by the Court, nothing else appearing, since value is a matter of opinion. In *Mossy Creek Bank v. Jefferson County*, 153 Tenn., 332, 284 S. W. 64, it was held that mere error in honest judgment of a county board of equalization as to value of property will not obviate binding effort of conclusion, in absence of fraud. The rule announced by the above cases is no longer open to doubt or discussion. Where, however, the Board acts illegally, fraudulently or in excess of its jurisdiction, *certiorari* is the proper remedy. *State, ex rel. v. Dixie Portland Cement Co.*, 151 Tenn., 53, 58; *Railroad v. Bate*, 80 Tenn., 573.

The provision of the statute that the valuation made by the Board "shall be conclusive and final" presupposes a substantial compliance with the proceedings prescribed with reference to the method of making valuation of railroad property.

The Commission, as affirmatively appears from the itemized assessment made by them, considered all of the elements specified in the statutes (Code 1526). The Commission had before it the return of the railway and other evidence submitted and fixed the value of the railway's property in the sum above stated. No witness, or document in evidence, fixed the exact value as reported by the Commission; but from the facts developed, the Commission held itself able to fairly and equitably fix the actual cash value of the property. No intentional discrimination or fraud on the part of the Commis-

sion or Board is charged or proven. In *Rowley v. Chicago & N. W. R. Co.*, 293 U. W., 102, 79 L. Ed., 22, the Court said:

"There is nothing in this record to suggest any lack of good faith on the part of the board. Overvaluation resulting from error of judgment will not support a claim of discrimination. There must be something that amounts to an intention, or the equivalent of fraudulent purpose, to disregard the fundamental principle of uniformity."

In *Chicago Great Western R. Co. v. Kendall*, 266 U. S., 94, 69 L. Ed., 183, 189, the Court said:

"It is not enough, in these cases, that the taxing officials have merely made a mistake. It is not enough that the court, if its judgment were properly invoked, would reach a different conclusion as to the taxes imposed. There must be clear and affirmative showing that the difference is an intentional discrimination, and one adopted as a practice."

The rule announced in the above cases is generally recognized and needs no additional citation of authority in its support.

The good faith of the Commission and Board and the validity of their action are presumed; when assailed, the burden of proof is upon the complaining party. *Sunday Lake Iron Co. v. Wakefield*, 247 U. S., 350, 62 L. Ed., 1154.

It is contended for the railway that the Commission and Board should have made the assessment on the basis of capitalization of net income at a rate which would measure a fair return to the investor in the property, or, at least, that such method should have been made the predominant factor in arriving at the value of the property. Capitalization of net income is not specified in Section 1526 of the Code; but this factor could have been considered along with other elements

in fixing the value of the property. Incorporated in the assessment made by the Commission under the caption "Earnings" is a tabulated statement of net operating income for the years 1933-1938. A statement filed by the railway showed net operating revenue for the years 1931-1937 averaged \$947,530.60 per annum, and that the net revenue from non-operating property for the seven year period average \$13,747.28, making a total average net operating revenue of \$961,277.88. The insistence is that if this average net revenue be capitalized at 6%, a value of \$16,021,298 is shown for the entire system as compared with the \$23,996,604.14 fixed in the assessment. The statement of average income was considered by the Commission, as is shown by the following statement of one of the Commissioners made on the argument before them, "x x x to see what the trend was, whether the trend was upward or downward with the company, as justification for reducing or raising the assessment, so that was largely the purpose of having that in the brief, was what I thought." Greater weight was given to the most recent figures "to judge present day conditions."

We are unable to agree that the Commission, or the Board, was under any legal compulsion to make the assessment on the basis of capitalization of net income, or to make net income a predominant factor in arriving at the value of the property. A railroad is to be assessed according to its value as a railway, by taking into consideration the elements specified in Code, section 1526, which includes "other evidence taken to enable them to fairly and equitably fix the actual cash value of the properties." Counsel for the railway refers to *Railroad v. State*, 55 Tenn., 798, as approving decisions holding that "a tax can only be just and equal on railroad corporations by being assessed upon the profits." The court did not approve this as an exclusive method of ascertaining value; on the contrary,

the court said, "We can conceive of no better criterion by which its value can be ascertained, than, first, the value of the structure, superstructure and properties, and then the profits which may enure to its owners in its operation." The Court further stated, "A tax on a corporation may be proportioned to the income—revenue, as well as to the franchise granted, or the property assessed," citing *Minot, Jr. v. Railroad*, 18 Wall., 206 (21 L. Ed. 888). *Railroad v. State*, *supra*, was decided prior to the enactment of the first railroad assessment law in 1875.

In *Great Northern Ry. Co. v. Okanogan County*, 223 Fed., 198, it is said:

"The value of a completed railroad is not easy of ascertainment. Railroads are not usually bought and sold on the open market. Their value is in use, rather than in exchange, and many elements go to make up that value. The cost of construction or reproducing, the income, the earning capacity, the value of stock and bonds, have all been taken into consideration by the courts. None of these elements are controlling, however."

A like statement to the above is to be found in 26 R.C.L., 189.

It is complained by the railway that the apportionment of distributable property to Tennessee on mileage basis is invalid. The Commission found the railway's distributable property in Tennessee to be the average value per mile of the system distributable property multiplied by the number of miles of main track in Tennessee. On the basis of a total mileage in the system of 1,115.34, of which 800.02 miles is in Tennessee, and the total entire value of distributable property to be \$18,022,133.14, the Commission assigned to Tennessee for taxation a value of \$12,926,944. It is contended by the railway that this method of allocation is contrary to statute

(Code 1526) and has the effect of imparting into Tennessee for Taxation values located in other states, contrary to Article 1, section 8, and Article 2, section 28, of the Constitution of Tennessee, and the due process clause of the Fourteenth Amendment to the Constitution of the United States. It is further contended that the value of the entire property (\$23,996,604.14) "is in substantial excess of any reasonable opinion or estimated of value supported by or deducible from any evidence upon which such assessment was made, and which finding of value is not supported by or based upon any evidence in the record upon which the assessment was made, all of the evidence showing that the actual value is not in excess of \$16,021,298." This is a renewal of the contention that the value of the property should have been fixed on the basis of capitalization of net revenue of the system, and not upon the basis adopted by the Commission.

In *Railroad v. State*, *supra*, at page 797, the Court said, "If it be an interstate railroad, as in this case—a part in this State and a part in another—we know of no better plan to fix the taxable value of that portion lying in this State, than to ascertain what proportion the latter bears to the whole. Upon this subject; however, there is great conflict of authority, and great contrariety of judicial reasoning and ruling."

In *Franklin County v. Railroad*, 80 Tenn., 521, 540, the Court said:

"No part of the mere roadway can be said to be more valuable than any other part, when considered as a track for the exercise of the franchises of the company as a common carrier. It is, like the franchise itself, a unit for the purposes intended; these purposes being not merely the use of the road for the profit of the company, but its use for the benefit of the public. Any interruption of that use is a public as well as a private calamity. 'It may well

be doubted,' says the Supreme Court of the United States, 'whether any better mode of determining the value of that portion of the track within any one county has been devised than to ascertain the value of the whole road, and apportion the value within the county by its relative length to the whole.' State Railroad Tax Cases, 92 U. S., 608."

In *Pittsburg, C. C. & St. L. R. Co v. Backus*, 154 U. S., 421, 38 L. Ed. 1031, the Court quoted with approval the above paragraph taken from *Franklin County v. Railroad*, and held, that the value of one part of a single continuous line of railroad is fairly estimated by taking the part of the value of the entire road which is measured by the proportion of the length of the particular part to that of the whole road, unless accompanied with proof that portions of the road outside of the state were of largely greater value than any similar length of road within the state. In *Cleveland, C. C. & St. L. R. Co. v. Backus*, 154 U. S., 439, 38 L. Ed., 1041, that in assessing a part of a railroad within a state, the other part of which is in an adjoining state, when the assessing board ascertains the value of the whole line as a single property, and then determines the value of that within the state, upon the mileage basis, that is not a valuation of property outside the state, if no special circumstances exist to distinguish the conditions in the two states, such as terminal facilities of enormous value in one and not in another.

The record in the instant case does not disclose that the portions of the railroad outside Tennessee are largely of greater value than the portion within the State, or that any special circumstances exist to show a greater value outside the State than within the State. The railway contends, however, that by breaking down the whole net revenue so as to show the portion thereof earned within the State as compared to that

earned out of the State a greater value is shown to exist out of the State. The railroad was valued as a whole by the Commission. All of the elements set forth in Code, section 1526 were considered. Under the well established rule for assessment on a mileage basis, no exceptional facts appearing, the portion of the railroad in Tennessee could not be treated as an independent line, disconnected from the part without the State. Furthermore, the exception to the rule contemplates, we think, that it be clearly shown that the portion of the road out of the State has a greater value than the part within the State, such as terminal facilities or other improvements not found within the State.

Our conclusion on the question of allocation is that the assessment did not violate any of the railway's rights under the State Constitution, nor under the Fourteenth Amendment to the Federal Constitution.

Another complaint made by the railway is that the Commission and Board assessed its property at actual value, while the property of all other taxpayers was assessed at two-thirds of its actual value. A large number of affidavits made by local assessors were filed with the Commission to the general effect that affiants intentionally and systematically assessed other property for taxation at an amount not exceeding 75% of its value. Affidavits from others to like effect were also filed.

County assessors are required by law to assess property at its actual cash value (Code 1349). And they take an oath of office that they will assess all property at its actual cash value (Code 1343). They must make oath to the assessment lists, which contains the statement that they have assessed all property at its actual cash value (Code 1375). The assessment lists are returned to the county court clerk.

The assessments as made by the county assessors are not final. On the contrary, the assessment lists are required to be delivered by the county court clerk to the county board of equalizers (Code 1424). Under Code 1426, the duties and powers of the board are defined. It is made their duty "to carefully examine, compare, and equalize the county assessments." It is further provided therein that, "Said board shall have the power, and it is hereby made its duty, to increase or lower the entire assessment roll or any assessment contained therein, so as to equalize the assessment of all property contained therein, *and make such assessment conform to the actual cash value of the property described in the assessment.* If the property described in said assessment lists or any part thereof *shall have been assessed at less than the actual cash value thereof, the value of the same shall be increased so as to conform to the actual cash value thereof, x x x.*" (Italics ours.)

Under Code 1434, the county board upon returning the assessment roll to the clerk are required to append to the same a verification, signed by each member, that they have equalized and fixed the value of all property at the actual cash value thereof.

Under Code 1440, it is made unlawful for board to equalize at less than actual cash value. It is made the duty of the county board of equalizers to transmit to the State Board of Equalization a summary of the assessment as completed by it.

The State Board of Equalization is directed to meet at places throughout the State, selected by them. (Code 1448.) And it is provided in section 1456, that the Board "*shall have jurisdiction of, and it shall be its duty, to equalize during its*

session the assessments of all properties in the State" and its action "shall be final and conclusive as to all matters passed upon, x x x subject to judicial review." (Italics ours.)

If the county assessors and the few members of county boards of equalizers making affidavits on the hearing before the Commission assessed property at less than actual value, and did so intentionally and systematically, there is no showing whatever that the members of the State Board of Equalization violated their oath of office by underassessing property. In the absence of a contrary showing, it must be assumed that the State Board did their duty. There is neither allegation nor proof that the State Board intentionally and systematically refused to equalize assessments at actual value. The good faith of such officers and the validity of their actions are presumed. *Sunday Lake Iron Co. v. Wakefield*, 247 U. S., 350, 62 L. Ed., 1154. In order to support a claim of discrimination under the equal protection clause of the Fourteenth Amendment there must be something that amounts to an intention or the equivalent of fraudulent purpose to disregard the fundamental principle of uniformity.

Another complaint made by the railway is that the Commission and Board included in the assessment interest bearing securities and corporate stocks to the value of \$2,484,000, not subject to taxation. The assessment shows on its face that the value of the railroad was fixed, "making due allowance for all non-taxable securities held." The securities were considered by the Commission merely as reflecting on the present financial condition of the railway.

It is complained that the Commission included 3.65 miles of railroad, known as the "West Nashville Branch," as main track mileage in computing the value of the railway's distrib-

utable property. It is asserted that all of the evidence shows this line to be side tracks. The railway's own return shows this 3.65 miles to be main track.

From our examination of the record we are satisfied that the assessment made on the property of the railway was fair and equitable. There is nothing to support the contention that the assessment was discriminatory or arbitrary.

The record shows (ex. 19) that the property of the railway in Tennessee, was valued for taxation in former and 1938-1939 years as follows:

"1923-1924	24,000,000
1925-1926	24,795,303
1927-1928	24,795,303
1929-1930	26,000,000
1931-	23,750,000
1932-1933	17,000,000
1934-1935	16,999,966
1936-1937	16,499,998
1938-1939	16,223,194"

The former valuations were not made the basis for the 1938-1939 assessment; but they may be looked to on the argument that the railway's property had declined in value.

The Board in its opinion stated, "It will be seen, that the assessment made for the year 1938-1939, is a substantial reduction from the high of 1929-1930, indeed, a reduction in the sum of \$9,776,806.00. We are convinced that this reduction of companies assessment from the high point in recent years, is comparable with the reduction enjoyed by owners of other property or any class of property, within the bounds of this State."

It is argued that property generally, throughout the state, is assessed for taxation at less than cash value, and that the

Court should take judicial knowledge of such underassessment. Whatever may have been the practice in this regard in former times, it is our belief that since 1930 assessments generally are and have been higher than the actual cash value of the property assessed.

It is argued that the Commission "arbitrarily assessed the railway's distributable property at the valuation placed upon it for the preceding biennium, notwithstanding the abandonment of 38 miles of Tennessee main track which the Commission had in said previous assessment included at a valuation of \$15,407.93 per mile, aggregating \$587,500." The argument seems to be that the Commission and Board should have deducted from the assessment the sum of \$587,500 representing the value alleged to have been placed on 38 miles of main track in the assessment of 1936-1937, and asserted to have been thereafter abandoned. The railway returned 800.2 miles of main track for the 1938-1939 assessment and that is the mileage assessed. The 38 miles was not included in the return or the assessment. In considering the various factors and elements going to make up the distributable value of the properties for 1938-1939, the Commission and Board found the total value thereof (excluding the 38 miles above mentioned) to be \$12,926,944, which assessment it is asserted is the same as 1938-1939. The total assessment for 1938-1939 was \$276,804 less than for the previous biennium. The valuation for assessment of the 800.2 miles of main track returned by the railway for assessment fixed by the Board, under the statute and authorities hereinbefore cited, cannot be reviewed by this Court, the Board not having exceeded its jurisdiction, or acted illegally.

The opinion of the Board contains the following:

"This appeal presents to the Board a difficult problem. Each member is *ex officio*. Therefore, adequate time is

not ours to give the necessary investigation to entirely satisfy even ourselves, that we may reach an equitable conclusion. However the responsibility is ours and we would not shirk it."

It is contended that this statement shows that the Board made the assessment, or approved the assessment without making necessary investigation. The opinion specifically refers to the railway's exceptions and there is nothing to show that they were not given consideration. While not dealt with seriatim in the opinion, the conclusion reached was that the assessment made should stand. Various additional affidavits, charts and maps were introduced by the railway before the Board and there is nothing to show that these were not considered by the Board. On the contrary the record shows that the exceptions were fully argued before the Board and the able counsel for the railway and the Board acquainted the Board with all the pertinent facts and with their respective contentions. The assessment as made by the Commission, together with the whole record as made up before it, was filed with the Board, as required by Code 1535. The Board "proceeded to examine the assessment so made," as required by Code 1534. It received additional evidence from the railway. It is mere empty assertion to say that the Board did not give proper or sufficient consideration to the cause. To upset the decision of this *quasi* Court because of the expression set out above, which was immediately followed by the language, "However, the responsibility is ours and we would not shirk it," when there has been a full hearing on the exceptions, would be wholly unwarranted, especially when on a full hearing by the Board it was found that the exceptions were without merit, and subsequently so found, in effect, by the circuit judge.

After due consideration, we find all of the assignments of error to be without merit. The result is that the judgment of the trial court is affirmed. The railway will pay the costs of the appeal.

D. W. DEHAVEN,
Judge

COOK, J., and KENNERLY, Sp. J., concur.

McKINNEY, J., and CHAMBLISS, J., dissent.

6. DISSENTING OPINION OF MR. JUSTICE McKINNEY.

From Record, pp. 135-138

Davidson Law.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
Plaintiff in Error,

vs.

GORDON BROWNING, ET AL,
Defendants in Error.

DISSENTING OPINION.

I am of the opinion that the State Board of Equalization has not complied with the law, and for that reason the case should be remanded to that body in order that it may find the assessable value of the Railway property.

The State Board of Equalization, as I see the matter, has proceeded upon the theory that it is an appellate board to review and correct the errors committed by the Railroad and Public Utilities Commission when, according to my interpretation of the law, it is the final tribunal for fixing the value of the Railway property, and the report of the Commission is only advisory and informative. The Commission assesses the property and then certifies same to the State Board of Equalization for its final determination as to its cash value.

Under the law it is made the duty of the Railway to file a sworn schedule on the first day of April biennially, in the even years, giving the Commission the information set forth in section 1509 of the Code. Other pertinent statutes are as follows:

1526. "Upon examination of every such schedule and statement and other evidence taken by them, the said commission shall proceed to ascertain and determine the value of said property within the state for taxation and assess the same accordingly, taking into consideration the capital stock, corporate property, franchises, and gross receipts, the market value of the shares of stock and bonded indebtedness, and such other evidence as is afforded by said statements and schedules or other evidence taken to enable them to fairly and equitably fix the actual cash value of the properties of such persons."

1533. "Said assessments shall be completed on or before the first Monday in August, and within ten days from the first Monday in August, the owner of any property assessed may appear and file exceptions to said assessment, together with such evidence as they may desire to submit as to the value of the property assessed, and at the expiration of said ten days, said commission shall reassemble and examine such additional evidence and exceptions as may have been filed, and act thereon, either changing or affirming their valuation. And on or before the first Monday in September, said commission shall file with the board of equalization the assessments made by them, together with such records as may be deemed necessary."

1534. "The state board of equalization shall proceed to examine said assessments so made by the commission, and they are authorized to increase or diminish the valuation placed upon any property valued by said commission, and are further authorized to require of said commission any additional evidence touching one or more of the properties assessed, and shall consider such additional evidence so furnished in fixing the correct value of any property so assessed, and said assessments shall not be deemed complete until corrected and ap-

proved by the said board of equalization; and the governor is authorized to call said commission at any time to perform the duties imposed upon them; provided, however, that if said board of equalization shall so desire, they shall have the power without referring any assessment to said commission, themselves to employ experts, accountants, and to call witness to testify upon any assessment certified to them by said railroad commission; and said board of equalization shall have the same powers to compel attendance of witnesses, production of books, papers, and documentary evidence as is by this statute given to said commission. Said board of equalization shall have the right to call upon the interstate commerce commission for any valuations of property in the office of the interstate commerce commission and evidence in possession of said commission in support of such valuations.

"All of the evidence thus acquired by said board of equalization shall be considered by them in addition to the evidence transmitted to said board by said commission in support of the assessment so fixed by said commission.

"Any expense incurred by said board in calling for the additional proof as to the value of any property certified to them by said commission shall be by said board of equalization certified to the state comptroller and paid by him out of any moneys in the treasury not otherwise appropriated."

1535. "On or before the third Monday in October, said board of equalization shall certify to the commission the valuation fixed by it upon each property assessed under this law, and the action of the board of equalization in fixing the valuation upon such property shall be conclusive and final and the valuation so fixed shall be assessed against said property and the taxes due thereunder be paid."

From the foregoing statutes it appears that the responsibility for finally fixing the value of the Railway property is vested in the State Board of Equalization, and it cannot discharge that duty by giving the report of the Commission a perfunctory and superficial examination and consideration.

The report of the State Board of Equalization begins with this statement:

"This appeal presents to the Board a difficult problem. Each member is *ex officio*. Therefore, adequate time is not ours to give the necessary investigation to entirely satisfy even ourselves, that we may reach an equitable conclusion."

As I construe the statutes, the assessment by the Commission does not become final until approved by the State Board of Equalization; that Board being vested with power to either increase or decrease the value placed upon the Railway property by the Commission even though there has been no appeal. The Board states very frankly that it did not have time to make the necessary investigation to enable it to reach an equitable conclusion. But the statute imposes such duty upon it, and until such investigation and consideration is made it has not complied with the law. In this connection I wish to emphasize the fact that the statute authorizes the Board "to employ experts, accountants, and to call witness to testify upon any assessment certified to them by said railroad commission." They also have the right to call upon the Interstate Commerce Commission for any valuation made by it of the involved property. The State Board of Equalization is, therefore, vested with all necessary authority, and has the facilities at its disposal to enable it to arrive at an equitable and just valuation of the Railway property.

The State Board of Equalization, furthermore, seems to have been largely influenced by the 1936-1937 assessment of the Railway property, which, it states, the record shows was agreed to by the Railway. Such statement is not supported by the record; but if it was that would be no criterion of value, since the statute expressly provides the method by which such value is to be ascertained.

The Board in its report makes the following additional statement:

"It appears in the record, and it was stated in argument, that the Commission, in reaching its conclusion, looked to the capital stock, corporate property franchises and gross receipts, the market value of the shares of stock and bonded indebtedness, and all evidence as afforded by the returns, statements and schedules made by the company. We assume that their statements are true, and we understand that these elements must be used, as a matter of law, in making such assessments."

It is apparent from this statement that the Board did not consider these elements, as it was its duty to do, but proceeded upon the assumption that the Commission had considered same and had, therefore, arrived at a valuation in the manner provided in the statute.

Counsel for the State content that there is no fixed, positive or definite formulation for the valuation of such property. We are unable to accede to this position of counsel. The Board, necessarily, is to arrive at the valuation by the method set forth in the statute for the ascertainment of its value by the Commission. It was certainly never intended that the Commission should use one formula and the Board a different one.

This is a case of great importance both to the State and the Railway, and one that the Board should fully and carefully investigate and consider. Only three of the five members composing the Board participated in the hearing and consideration of this case. While the statute provides that three members of the Board shall constitute a quorum, I am of the opinion that as a matter of policy it would be better in a case of this magnitude and importance if it were heard, investigated and considered by the entire membership of the Board in order that as full and complete justice may be arrived at as is humanly possible.

(Signed) McKINNEY, J.

7. DISSENTING OPINION OF MR. JUSTICE CHAMBLISS.

From Record, pp. 138-143

Davidson Law

NASHVILLE CHATTANOOGA & ST. LOUIS RAILWAY,
Plaintiff in Error,

vs.

GORDON BROWNING, ET AL,
Defendants in Error.

DISSENTING OPINION.

I find myself in accord with the views expressed by Mr. Justice McKinney in his dissenting opinion. Whether because of "inadequate time * * * to give the necessary investigation," as expressed in the opinion handed down by the Board of Equalization, or because of an under estimate by the members of that Board of the extent and nature of the duties which I understand the law imposes upon them in the making of railroad assessments, as distinguished from assessments of real estate generally, I am satisfied that errors appear.

I fully appreciate that the Circuit Court and this Court are restricted to the correction of errors involving excess of jurisdiction, illegality or fraud, without power to substitute our opinion as to value for that of the assessing tribunal, but no such restriction applies to the Board of Equalization. That Board sits as a quasi-Court with *de novo jurisdiction*, with the obligation to render judgments of appraisal of value for taxation upon an *independent* investigation and examination into all the evidence. It is this judgment, so arrived at and exercised independently, which is made "conclusive and final."

It seems to me quite obvious from the recitals of the brief opinion filed, that the judgment fixing the assessment in this case was not so arrived at, but was rested largely upon two matters referred to in the opinion, (1) statements, or conclusions, in the report of the Railroad Commission, which, says the opinion, "we assume * * * are true" (that is, have adopted without independent examination and verification); and (2) the record of assessments of this Railroad for previous years, set out in the opinion.

I realize the difficulty of the task which I understand the law imposes on the Board of Equalization, composed, as it is, of gentlemen whose duties incident to their several highly important offices are so exacting as to leave them little time for the discharge of their extra "ex officio" duties as members of this Board. To meet this situation, however, the legislature has expressly provided that the Board may employ their own experts and accountants and bring in evidence from various sources of different kinds, including such as may be in possession of the Interstate Commerce Commission, all in order that the Board of Equalization may fit itself to make its own finding and appraisal of values on which to base its assessments. Now it does not appear that any such course was followed, but, as already suggested, the Board *assumed* the correctness of the conclusions reported by the Railroad Commission and adopted them *in toto*. However competent and capable the distinguished gentlemen composing the Railroad Commission are, the duty and responsibility is imposed, not upon them, but upon the Board of Equalization, of rendering a judgment, which shall be "final and conclusive," after making for itself the investigation necessary to enable it to fix for itself these values.

It was exceedingly important to the petitioner in this case that the broad *de novo* jurisdictional powers of the Board of

Equalization should be fully and carefully exercised,—that “adequate time” should be taken for “the necessary investigation” that the Board might “reach an equitable conclusion.”

In addition to, and in line with the general criticism which I have felt constrained to make of the inadequacy of the examination apparently made by the Board of Equalization, in the exercise of its independent and final jurisdiction, an examination of the pertinent records convinces me that several specific errors appear going to the *legality* of the judgment of the Board of Equalization before us for review:

1. Reference has been made to the consideration given assessments of this Railway's properties for former years. One third of the brief opinion of the Board is devoted to a comparative analysis of these former assessments which are quite apparently given predominant consideration. I find no authority for thus using assessments made in former years as a basis of value. The petition shows, and common knowledge of affairs supports, that radical and fundamental changes have taken place in the last few years in the conditions which basically affect the value of the railroads, so that assessments of former years furnish today no fair controlling criteria for appraisal of this particular, and peculiar class of property. For example, what is known as the “franchise” of a railroad, formerly a highly important element of value, has today greatly less value. A franchise is a special privilege, originally granted to a subject by the Crown, now in this country by the Government. It implies profitable advantages, not enjoyed generally, or competitively. A common incident of a franchise is a degree of monopoly. The grant to railroads carries the right of eminent domain, for instance. Inherent, therefore, in the franchise of a railroad, were former advantages which yielded automatically more or less large profits, not to be generally enjoyed. Now, this is changed, and it must be conceded— all men know it—that practically all of this element of value,

formerly the dominant incident of the franchise, has been wiped out, in large measure by the policies and contributions to competition of the Government itself. This competition in transportation of passengers and freight, graphically set forth in the proof in the record, has apparently not only wiped out the major elements of value of the franchise, but has diminished greatly the "use" value of the railroads as a whole, and calls for at present a thorough going investigation of basic elements of value applicable to present day conditions, which it is apparent the Board of Equalization, for reasons indicated, did not undertake, or have opportunity, to make.

2. It is complained for petitioner that the Board of Equalization refused to regard the net earnings as an important element in fixing value. Attention is called to the argument before the Board of Equalization of Mr. Hendley, (expert and spokesman for the Railroad Commission) that "not once in the law do we find the word 'net'"; that "the elements principally are the 'gross' receipts, the value of the stocks and bonds and the value of the corporate property"; and in commenting on the assessment made by the Railroad Commission, the opinion of the Board of Equalization says that it was the "gross receipts" which were considered. While it is true that in Code Section 1526 the expression "gross receipts" is used, we think it clear that the law as a whole contemplates that the operating expenses shall be considered in the same connection, thus arriving at the "net." The language of this section as a whole so requires, calling, as it does, for statements and schedules and other evidence as a basis for fixing the values. Also, Section 1509, setting out more specifically the information to be laid before and considered in making the assessment, expressly couples together the gross receipts and the expenses.

3. I think the record as a whole indicates that, contrary to the law applicable, certain intangibles of considerable amount, non-taxable under what is known as the Hall income tax law, have been taken into account in fixing the valuation arrived at as a whole. If this is so, then the assessment has to this extent, certainly, been illegally arrived at. The brief opinion is silent on this question, much stressed by petitioner, but it does appear that Mr. Hendley, the official spokesman for the Railroad Commission, in presenting the case to the Board of Equalization, did specifically call attention to the fact that the Railway held these valuable assets and this item was thus plainly brought to the attention of the Board in support of the assessment figures as reported by the Railroad Commission. It seems to me that it may be fairly assumed that these items were taken into account in fixing the assessment. In arguing before the Board of Equalization for its adoption of the assessment figures reported by the Railroad Commission, Mr. Hendley, above mentioned, said, "The N. C. & St. L. Railway unlike other railroads have a nice cash surplus on hand. Its financial set up is good. On January 1 of this year they had on hand cash and non-taxable Federal bonds and notes in the amount of \$3,569,801.00 to which should be added the \$140,000.00 earned since January, 1938." The inference seems plain that these elements showing the Railway's "financial set up is good" were considered in appraising the corporation's properties as a whole—otherwise why mention them? Commenting on this matter, the majority opinion says, "The securities were considered by the Commission merely as reflecting on the present financial condition of the Railway." Obviously, such consideration reflected an increased value and thus served to bolster up the assessment as a whole.

4. Reference has been made to apparent reliance on assessments of former years. It is shown that 38.96 miles of

main track of petitioner's railroad, formerly assessed at \$590,292.95, had been abandoned, with the approval of the Interstate Commerce Commission. This reduced the total track mileage in Tennessee from 838.98 to 800.02 miles, yet the value fixed for assessment here is identical with that made in the greater mileage for 1936, being, in both instances, \$12,926,944.00. This seems to demonstrate that the assessment for this previous year was not only considered, but adopted.

5. The evidence appears to show that 3.65 miles of track, described as West Nashville Branch, is an industrial or side track and that this trackage has been included in the assessment as returned as main track mileage.

Without further elaboration, I concur with Mr. Justice McKinney that justice demands that the case should be remanded to the Board of Equalization for a re-determination of the assessment.

(Signed) CHAMBLISS, J.

**8. OPINION OF SUPREME COURT OF TENNESSEE ON
PETITION TO REHEAR.**

From Record, pp. 143-145.

Davidson Law

**THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY**

Plaintiff in Error

vs.

GORDON BROWNING, ET AL.,

Defendants in Error

OPINION ON PETITION TO REHEAR.

This cause is again before the court on the railway's petition to rehear and the reply of the State Board of Equalization thereto. The court discussed in its opinion the questions made by the railway's assignments of error and decided the same. Most of the petition to rehear is devoted to a reargument of some of these questions. One new question is sought to be raised by the petition. It is asserted that the localized property of the railway was assessed at \$3,297,250 by the Board "without knowing or inquiring how the aggregate is made up," and that the Commission withheld from the Board "all information of its valuation of localized property items." This attack on the assessment was not specifically made by any of the assignments of error filed in this court. Rule 14 of this court provides, (fol. 275) among other things, as follows: (173 Tenn., 874.)

"Assignment of Error. The assignment of errors shall contain in the order herein stated:

(1) * * *

"(2) A statement of the errors of fact or law relied upon to reverse or modify the same, showing *specifically* wherein the action complained of is erroneous, and how it prejudiced the rights of the appellant, or plaintiff in error, and reference to the pages of the record where the ruling of the court on matters constituting errors of law appears; and in case it is an error of fact, to the pages of the record where the testimony is to be found relied upon to sustain the same." (Italics ours.)

The railway, as before stated, did not specifically assign as error the action of the Commission and Board in assessing its localized property at \$3,297,250. The rule assumes *prima facie* the correctness of the proceedings of the inferior courts, and imposes on parties assailing them the duty of specifically pointing out the errors of which they complain. *Denton v. Woods*, 86 Tenn., 37; *Woods v. Frazier*, 86 Tenn., 500. A subject on which no assignment of error has been made need not be considered on appeal. *Hawkins v. Hubbell*, 127 Tenn., 312.

The exceptions filed before the Commission did not specifically complain of the assessment on the localized property. The petition for certiorari alleged that it prayed an appeal to the Board "to the end that said exceptions might be there further considered," and it was further averred that it was notified "that its exceptions as filed with the Railroad and Public Utilities Commission would be considered by the (fol. 276) State Board of Equalization on November 2, 1938, and said hearing was accordingly held upon the evidence and record transmitted to the Board by the Railroad and Public Utilities Commission." The railway in its petition for certiorari to the circuit court exhibited therewith its exceptions. It was not alleged in the petition for certiorari that the assess-

ment made on the localized property was illegal or void. No such issue was specifically tendered by the petition.

This court did not hold that the examination by the Board of the assessment made by the Commission was dependent upon the railway's appeal or limited or restricted thereby. On page 2 of the opinion the substance of Code 1534 defining the duties of the Board with reference to the assessment returned by the Commission is set out. But, as shown by the record, the railway in its petition for certiorari to the circuit court did not specifically allege that the assessment of its localized property made by the Commission and approved by the Board was invalid for any reason.

The railway's motion for a new trial, filed in the Circuit Court, does not contain in any of the grounds therefor any specific complaint that the trial judge held the assessment of localized property valid, or that he refused to pass upon such question.

Rule 14 (5) of this court provides that the grounds upon which a new trial is sought in this court "will not constitute a ground for reversal, and a new trial, unless it affirmatively appear that the same was specifically stated in the motion made for a new trial in the lower court, and decided (fol. 277) adversely to the plaintiff in error, but will be treated as waived, in all cases in which motions for a new trial are permitted." The following is recited in the rule:

"This is a court of appeals and errors, and its jurisdiction can only be exercised upon questions and issues tried and adjudged by inferior courts, the burden being upon the appellant, or plaintiff in error, to show the adjudication, and the error therein, of which he complains. *R. R. Co. v. Johnson*, 114 Tenn., 640; *Wood v. Frazier*, 86 Tenn., 501; *Jacks v. Wil-*

liams-Robinson Lumber Co., 125 Tenn., 123; *Hobbs v. The State*, 121 Tenn., 413; *Tennessee Central R. R. Co. v. Brown*, 125 Tenn., 351."

For the reasons stated above, the railway cannot be heard to complain in this court of the amount of the assessment made on its localized property.

The petition to rehear contains some erroneous inferences and deductions from matters decided by the opinion of the court, we are responsible alone for the opinion and not for the construction, inferences or deductions that counsel may place thereon.

The Board has jurisdiction. It did not act illegally. The railway makes no claim of fraud as against the Commission or the Board. The valuation placed on the properties of the railway for taxation by the Board cannot be reviewed by the courts, in the absence of fraud. See authorities cited in opinion.

Our conclusion is that the petition to rehear is without merit and must be overruled.

DEHAVEN, Judge.

SUPREME COURT OF THE UNITED STATES.

No. 789.—OCTOBER TERM, 1939.

Nashville, Chattanooga, & St. Louis
Railway, Petitioner.

vs.

Gordon Browning, et al., constituting
the State Board of Equalization of
Tennessee.

On Writ of Certiorari to
the Supreme Court of the
State of Tennessee.

[May 20, 1940.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

This case is here to review a judgment of the Supreme Court of Tennessee sustaining an assessment of petitioner's property, tangible and intangible, under that state's *ad valorem* tax law. All Tennessee property is subject to such a tax; but there are two schemes of procedure for making assessments, one for public service corporations and one for other taxpayers. As to ordinary property the task of valuation rests upon officials of the various counties. For public service corporations the assessments must be made by the Railroad and Public Utilities Commission, which is commanded to ascertain the "actual cash value" of corporate property situated in Tennessee. Tennessee Code, § 1526. Since petitioner operates an interstate railroad, the value of its entire system and not merely of that portion within Tennessee had first to be ascertained. This the Commission estimated at \$23,996,604.14. From this figure was deducted the value of petitioner's "localized" property, that is, its terminal buildings, shops, and nonoperating real estate. The remaining sum served as the base for calculating the value of what in the language of Tennessee law is called the utility's "distributable" property attributable to Tennessee, § 1528, which the Commission ascertained by taking the ratio which petitioner's mileage in Tennessee bears to its total mileage. This was found to be \$12,925,944; and that is the amount of the assessment here in dispute. From this action by the Commission petitioner appealed.

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in accordance with the local statute, to the State Board of Equalization, respondent here. After hearing and by formal opinion, the Board confirmed the Commission's valuation.

In anticipation of a certification by the Board of its final assessment preliminary to the collection of taxes based upon it, the Railway brought an appropriate proceeding in the state courts to set aside what it claimed was the void "excess of the fair taxable value" of its property. This suit was dismissed by the trial court and its judgment was affirmed by the Supreme Court of Tennessee with two justices separately dissenting. — Tenn. — Because of petitioner's claim that the result below was inconsistent with decisions of this Court, we granted certiorari. 309 U. S. —. The assessment was contested below on objections grounded in both state and federal constitutions. Here, of course, only federal questions are open. Petitioner claims that the challenged assessment violates the Fourteenth Amendment in its guarantees of due process and the equal protection of the laws, and is offensive to the Commerce Clause.

We shall first consider the claim based on the historic implications of the Commerce Clause as a limitation upon the state's taxing power. Petitioner argued that Tennessee has taxed values which are in truth outside its borders, thereby burdening that which the Commerce Clause has left free. The guiding principles for adjustment of the state's right to secure its revenues and the nation's duty to protect interstate transportation are by this time well settled. The problem to be solved is what portion of an interstate organism may appropriately be attributed to each of the various states in which it functions. Basic to the accommodation of these conflicting state and national interests is realization that by its very nature the problem is incapable of precise and arithmetic solution. In tapping these common sources of revenue a state cannot, we have held, use a fiscal formula, whatever may be its appearance of certitude, to project the taxing power of the state plainly beyond its borders. *Wallace v. Hines*, 253 U. S. 66. In the light of these principles, Tennessee has not overstepped its bounds.

In basing its apportionment on mileage, the Tennessee Commission adopted a familiar and frequently sanctioned formula. *Pullman's Car Co. v. Pennsylvania*, 141 U. S. 18; *Maine v. Grand Trunk Ry. Co.*, 142 U. S. 217; *Pittsburgh & Co. Railway Co. v.*

Backus, 154 U. S. 421; *Branson v. Bush*, 251 U. S. 182. See 2 Cooley on Taxation, pp. 1660-64. Its asserted inapplicability to the particular situation is rested on petitioner's evidence as to the comparative revenue-producing capacity of its lines in and out of Tennessee. But both the Commission and the Supreme Court of the state thought that this evidence, however weighty, was insufficient to displace the relevance of the formula. In a matter where exactness is concededly unobtainable and the feel of judgment so important a factor, we must be on guard lest unwittingly we displace the tax officials' judgment with our own. Certainly we cannot say that the combined judgment of Commission, Board, and state courts is baseless. Wherever the states' taxing authorities have been held to have intruded upon the protected domain of interstate commerce in their use of a mileage formula, the special circumstances of the particular situation, in the view which this Court took of them, precluded a defensible utilization of the mileage basis. *Union Tank Line Co. v. Wright*, 249 U. S. 275; *Wallace v. Hines*, *supra*; *Southern Ry. Co. v. Kentucky*, 274 U. S. 76. No such circumstances are here presented.

This brings us to the Company's claims under the Fourteenth Amendment. The Railway first asserts that it is a victim of such invidious discrimination in the administration of Tennessee's tax statutes as is proscribed by the guaranty of "the equal protection of the laws." The claim is founded upon the following circumstances. As we have already indicated, there are two separate modes for the assessment of property in Tennessee, each with its distinctive procedure. The property of public service corporations is assessed by the Commission; all other property by local officials. This broad classification, separating two very different types of property, has been reflected, according to petitioner's contention, by a corresponding difference in the bases of assessment. For more than forty years, so it was urged before the courts of Tennessee and later here, the county assessors have systematically valued property at far less than its true worth, while utility and railroad properties have been assessed by the Commission at full value.¹ This systematic differentiation, petitioner claims, has been continuous and state-wide in its operation; has been "repeatedly

¹ For a history of Tennessee railroad taxation, see Brannen, Taxation in Tennessee, pp. 62 *et seq.*; Robison, Bob Taylor and the Agrarian Revolt in Tennessee, pp. 123 *et seq.*

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brought to the attention of the General Assembly of the State Tennessee"; has been left uncorrected by that body; and until the present case, so far as we are informed, has been unchallenged. In support of its claim the Railway adduced official and unofficial reports as well as a volume of affidavits from local assessing officials in the counties through which its lines run—all to the effect that locally assessed property was undervalued. The issue of forbidden discrimination was thus squarely raised below. But the Tennessee Supreme Court did not deem petitioner's evidence sufficient to overcome the presumption that in the exercise of its reviewing function, the Board had equalized assessments in accordance with the command of state law. We should be reluctant on such a question to reject the state court's determination as without foundation and there is not enough in the record to warrant its repudiation. At the bar of this Court petitioner proffered the minutes of the State Board of Equalization—not in the record—to show the absence of equalization. Considering the nature of the litigation, the vigor and ability with which it was contested before the Circuit Court of Davidson County, on motion for new trial there, on the original appeal to the Supreme Court of Tennessee and finally on petition for rehearing, it would indeed turn this Court into a board of tax review if we were now to receive evidence not offered in any of the tribunals below.

But were we to take judicial notice of that which these minutes were offered to show, and therefore to regard the ground taken by the state court as a strained evasion of the differentiation between utility property on the one hand and all the rest on the other, we should still find no denial of the equal protection of the laws. It must be emphasized that the Company makes no claim that its property is singled out from among other public service corporations for discrimination. Its asserted grievance is common to the whole class. We must put to one side therefore all those cases relied on by the petitioner which invoked the Fourteenth Amendment against discriminations invidious to a particular taxpayer. *Reynold v. Chicago Traction Co.*, 207 U. S. 20; *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350; *Sioux City Bridge v. Dakota County*, 260 U. S. 441; *Bohler v. Callaway*, 267 U. S. 479; *Cumberland Coal Co. v. Board*, 284 U. S. 23; *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239. All these cases are inapposite. None denied power to a state to apply different yardsticks to different classes of property. Equally in

relevant are those cases in which this Court, because of the nature of the litigation, was construing the uniformity clause of a state constitution, and was not applying the Fourteenth Amendment. *Greene v. Louisville & I. R. Co.*, 244 U. S. 499; *Louisville & N. R. Co. v. Greene*, 244 U. S. 522. This Court has previously had occasion to advert to the narrow and sometimes cramping provision of these state uniformity clauses, and has left no doubt that their inflexible restrictions upon the taxing powers of the state were not to be insinuated into that meritorious conception of equality which alone the Equal-Protection Clause was designed to assure. See *Puget Sound Co. v. King County*, 264 U. S. 22, 27.

That the states may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some kinds of property at higher rates than others; and in making all these differentiations may treat railroads and other utilities with that separateness which their distinctive characteristics and functions in society make appropriate—these are among the common-places of taxation and of constitutional law. The *Kentucky Railroad-Tax Cases*, 115 U. S. 321; *Pacific Express Company v. Seibert*, 142 U. S. 339; *Florida Central & C. R'd Co. v. Reynolds*, 183 U. S. 471; *Southern Ry. Co. v. Watts*, 260 U. S. 519; *Atlantic Coast Line v. Doughton*, 262 U. S. 413; *Rapid Transit Corp. v. New York*, 303 U. S. 573. Since, so far as the Federal Constitution is concerned, a state can put railroad property into one pigeonhole and other property into another, the only question relevant for us is whether the state has done so. If the discrimination of which the Railway complains had been formally written into the statutes of Tennessee, challenge to its constitutionality would be frivolous. If the state supreme court had construed the requirement of uniformity in the Tennessee Constitution so as to permit recognition of these diversities, no appeal could successfully be made to the Fourteenth Amendment. Here, according to petitioner's own claim, all the organs of the state are conforming to a practice, systematic, unbroken for more than forty years, and now questioned for the first time. It would be a narrow conception of jurisprudence to confine the notion of "laws" to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish

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what is state law. The Equal Protection Clause did not write empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains, are often tougher and true law than the words of the written text. Compare *Cariño v. Insular Government*, 212 U. S. 449, 459. And if the state supreme court chooses to creep up under a formal veneer of uniformity the established system of differentiation between two classes of property, an exposure of the fiction is not enough to establish its unconstitutionality. Fictions have played an important and sometimes fruitful part in the development of law; and the Equal Protection Clause is not a command of candor. So we are of opinion that such a discrimination, not sovidious but long-sanctioned and indeed conventional, would not be offensive to the Fourteenth Amendment simply because Tennessee had reached it by a circuitous road. It is not the Fourteenth Amendment's function to uproot systems of taxation inseparable from the state's tradition of fiscal administration and ingrained in the habits of its people.

Finally, the Railway claims that the valuation of its entire system on the basis of which the Commission has measured Tennessee shares, is so far in excess of "full cash value" as to offend the Due Process Clause. The details on which this claim is based are fully set forth in the opinions below and call only for summary treatment here. The argument basically derives from the fact that the Commission's valuation of petitioner's system was the same as that of the previous biennium, although numerous adverse economic facts are alleged to have greatly reduced the property's worth. But railroads, unlike farms and city lots and stocks and bonds, are not subjects of exchange. The very notion of a "full cash value" for a railroad is in many respects artificial. See 1 Bonbright, *The Valuation of Property*, pp. 511-632. Whatever may be the pretenses of exactitude in determining such a "value", to claim for it "self-justifying" validity, is to employ the term in its loosest sense. Compare *Chicago, B. & Q. Ry. Co. v. Babcock*, 204 U. S. 585, 598. Throughout the canvass by the state courts found no justification for upsetting the determination of the Commission, and we could scarcely find warrant in the record for doing so. But even assuming that there was an over-assessment, constitutional invalidity would not follow. If the needs of a state require higher taxes, the Fourteenth Amendment

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certainly does not bar their imposition. The maintenance of higher assessment in the face of declining value is merely another way of achieving the same result. *Great Northern Ry. Co. v. Weeks*, 297 U. S. 136, does not bar the way. That is the only case, and it was decided by a sharply divided Court, in which a non-discriminatory assessment was struck down simply because it was thought excessive. Plainly, therefore, the case must have rested upon considerations peculiar to its own facts. Those are not the facts now before us. We conclude, therefore, that the Commission's over-assessment of petitioner's property, if over-assessment there was, constitutes no deprivation of any right under the Federal Constitution.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.